

**AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT**

THIS Agreement is by and between **Unified Government of Athens-Clarke County, Georgia**, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter called the Owner) and **[Name of Contractor]**. (hereinafter called the Contractor). Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor will furnish all products, tools, construction equipment, skill and labor of every description necessary to carry out and to complete in a good, firm, substantial workmanlike manner construction of the RFP #00872, Athens-Clarke County Library AMH System, SPLOST 2011, Project #11, SPLOST 2011, Project #11 and will complete work in strict conformity with the Contract Documents.

ARTICLE 2 - THE PROJECT

2.01 RFP #00872, Athens-Clarke County Library AMH System, SPLOST 2011, Project #11 (hereinafter called the Project)

ARTICLE 3 – PROJECT ADMINISTRATOR and DESIGN PROFESSIONAL

3.01 Jacobs Project Management Company (hereinafter called the Project Administrator) which is to act as Owner's representative, assumes all duties and responsibilities, and has the rights and authority assigned to Project Administrator in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

~~3.02 The Project has been designed by **[NAME OF DESIGN PROFESSIONAL]** (hereinafter called the Design Professional and/or Architect) which assumes all duties and responsibilities, when directed by the Project Administrator, and have the rights and authority assigned to the Design Professional in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. Not Used.~~

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All Contract Times and/or time limits as defined by the General Conditions or as may be stated elsewhere in the Contract Documents are of the essence and are an essential element of this Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work shall be Substantially Completed within 160 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

B. The Work shall be completed and ready for final payment, Final Completion, in accordance with Paragraph 14.07 of the General Conditions within 190 calendar days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence and is an essential element of this Agreement and that Owner will suffer financial damage and loss, which will difficult or impossible to accurately estimate, if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions

B. Accordingly, if Contractor shall neglect, refuse, or fail to achieve Substantial Completion of the Work within the times specified in Paragraph 4.02, plus any extension thereof granted by Owner, Owner and Contractor agree that Contractor shall pay Owner as liquidated damages for delay (but not as a penalty), \$500 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion, plus any extension thereof granted by Owner, until such Work is Substantially Complete.

C. Accordingly, if after achieving Substantial Completion, Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times plus any extension thereof granted by Owner, Owner and Contractor agree that Contractor shall pay Owner as liquidated damages for delay (but not as a penalty), \$1,000 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment, plus any extension thereof granted by Owner, until the Work is completed and ready for final payment.

D. If the Contractor abandons the Contract before commencement of the Work or defaults in completion of all the Work after commencement thereof, the Contractor shall be liable for all liquidated damages as set forth in Paragraph 4.03. These fixed liquidated damages are not established as a penalty but are damages which would be difficult or impossible of accurate estimate, and are calculated and agreed upon in advance by the Owner and the Contractor as reasonable pre-estimates of the Owner's probable loss that will occur as a result of the failure on the part of the Contractor to complete the Work on time. Such liquidated damages referred to herein are intended to be and are cumulative and shall be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the Contract.

4.04 Waiver of Consequential Damages

A. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for loss of use, income, financing, and for loss of management or employee productivity or of the services of such persons; and

2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and bonding capacity, damage to reputation, and for lost profits.

B. The mutual waiver of Consequential Damages set forth in Paragraph 4.04 is applicable, without limitation, to all consequential damages due to either party's suspension or termination in accordance with Article 15 of the General Conditions. Nothing in this Paragraph 4.04 shall be deemed to preclude recovery of liquidated damages by the Owner in accordance with the requirements of the Contract, including Paragraph 4.03.

ARTICLE 5 - CONTRACT PRICE

5.01 The Owner hereby agrees to pay to the Contractor for the faithful performance of this Contract Agreement, subject to additions and deductions as provided in the Specifications and Bid, in lawful money of the United States of America, the sum of [CONTRACT VALUE WORDS] Dollars (\$(CONTRACT VALUE NUMBERS)) which sum shall also pay for loss or damage arising out of the nature of the Work aforesaid, or from the action of the elements, or from unforeseen obstructions or difficulties encountered in the prosecution of the Work, and for all expenses incurred by, or in consequence of the Work, its suspension or discontinuance and for well and faithfully completing the Work and the whole thereof, as herein provided, and for replacing defective work or products for a period of one year after completion.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Project Administrator as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments, no more than once monthly, based upon the Contract Price and the Contractor's Applications for Payment, as recommended by Project Administrator, during performance of the Work as provided below. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.07.A of the General Conditions.

B. If the Contractor has made application for payment as provided above, the Project Administrator will issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Project Administrator determines to be properly due, or the Project Administrator will state, in writing, itemized and specific reasons for withholding a Certificate as provided herein.

C. After the Project Administrator has issued a Certificate for Payment, the Owner will pay to the Contractor the amount covering Work completed plus stored products, less retention, less such amounts as Project Administrator may determine or Owner may withhold as set-offs, including but not limited to liquidated damages, and less aggregate of previous payments made.

D. Retention: The Owner will retain the following amounts from each properly certified Application for Payment:

1. Until the value of the Work completed, including stored materials, is at least 50 percent of the total Contract Price, 10 percent of the value of all Work satisfactorily completed, including stored materials.

2. When the value of the completed Work totals at least 50 percent of the Contract Price, the Owner will discontinue retaining additional amounts provided the Work is progressing satisfactorily and there is no specific cause for retaining a larger sum.

3. The Owner may elect to reinstate retention of 10 percent of the value of the Work completed if at any time the Contractor fails to make satisfactory progress, any Contract Times are not met, or if there is other specific cause. Satisfactory progress is identified as conforming to the construction Progress Schedule as required by the Contract Documents.

4. No form of collateral in lieu of cash will be acceptable as retainage.

5. Amounts retained by the Contractor from payments due to suppliers and subcontractors (expressed as a percentage) shall not exceed that being retained by the Owner.

E. All prior certificates or estimates upon which payments have been made are approximate only, and subject to correction by subsequent estimates and/or in the final payment.

F. In the event of a conflict, O.C.G.A. Sections 13-10-80 through 13-10-83 shall supersede and control any provisions to the contrary in this Article 6.

6.03 Final Payment

A. Will be made in accordance with Paragraph 14.07 of the General Conditions and upon final completion and acceptance of the Work as recommended by Project Administrator.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest in accordance with the requirements of Paragraph 14.02 of the General Conditions.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work. Contractor is familiar with state and/or local watering uses and restrictions, if any, that are in place at the time Bid is made.

D. Contractor has carefully studied all Technical Data: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all

additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Project Administrator written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Project Administrator is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. Specifications as listed in the table of contents of the Project Manual.
2. Drawings as listed in the Drawing Sheet Index at the front of each volume of drawings.
3. Addenda issued and as acknowledged in the Bidding Documents.

B. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

1. Notice to Proceed.
2. Work Change Directives/Architects Supplemental Instructions.
3. Change Order(s).

C. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

D. There are no Contract Documents other than those listed above in this Article 9.

E. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

10.02 Assignment of Contract

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

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

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

IN WITNESS WHEREOF, Owner and Contractor have executed this Contract Agreement under their respective seals on the day and date first above written in two counterparts each of which shall, without proof or accounting for the other counterparts, be deemed an original Contract.

This Agreement will be effective on _____, 20____ (which is the Effective Date of the Agreement).

APPROVED AS TO FORM BEFORE EXECUTION

By: _____
Athens-Clarke County Attorney's Office

OWNER: UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA

By: _____
(name signed)

NANCY B. DENSON

Title: MAYOR

Address: 301 COLLEGE AVENUE
ATHENS, GEORGIA

Attest: _____
(name signed)

JEAN SPRATLIN

Title: CLERK OF COMMISSION
(SEAL)

CONTRACTOR: [NAME OF CONTRACTOR]

By: _____
(name signed)

(name printed or typed)

Title: _____

Address: _____

Attest: _____
(name signed)

(name printed or typed)

Title: _____
(SEAL)

Note: If the Contractor is a corporation, the Contract Agreement shall be signed by the president or vice president, attested by the secretary and the corporate seal affixed. If the Contractor is a partnership, the Contract Agreement shall be signed in the partnership name by one of the partners, with indication that he or she is a general partner.

END OF SECTION

STATE OF GEORGIA

COUNTY OF CLARKE

In accordance with O.C.G.A. §36-91-21(e), we, the undersigned of [Name of Contractor] being first duly sworn, deposes and says that:

We have not directly or indirectly violated O.C.G.A. §36-91-21 (d), and more specifically, we have not

- prevented or attempted to prevent competition in such bidding or proposals by any means whatever,
- prevented or endeavored to prevent anyone from making a bid or proposal thereof by any means whatever, nor
- caused or induced another to withdraw a bid or proposal for the work.

We, the undersigned, to the best of our knowledge, affirm that no other officers, agents or other persons acted for or represented the Contractor in the bidding for and procurement of this Contract.

Signature	Printed Name	Title	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE ____ DAY OF _____, 20__

Notary Public

My Commission Expires: _____

(SEAL)

END OF SECTION

Section 00610
Performance Bond

STATE OF GEORGIA

BOND NO. _____

COUNTY OF CLARKE

KNOW ALL MEN BY THESE PRESENTS, that we, [Name of Contractor], as Principal, (hereinafter known as Contractor), and we, [Name of Surety], as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto Unified Government of Athens-Clarke County, Georgia for use and benefit of those entitled thereto, in the sum of _____ Dollars (\$_____) for the payment of which will and truly to be made, in lawful money of the United States of America, we do hereby bind ourselves, successors, assigns, heirs and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Owner has engaged the said Contractor for the sum of _____ Dollars (\$_____) for construction of RFP #00872, Athens-Clarke County Library AMH System, SPLOST 2011, Project #11 as more fully appears in a written Contract Agreement bearing the date of _____, 20___, a copy of which Contract Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, if said Contractor shall fully and faithfully perform all the undertakings and obligations under the said Contract Agreement hereinbefore referred to and shall fully indemnify and save harmless the said Owner from all costs and damage whatsoever which it may suffer by reason of any failure on the part of said Contractor to do so, and shall fully reimburse and repay the said Owner any and all outlay and expense which it may incur in making good any such default, and shall correct all defects in products and workmanship appearing within one year of the completion of all Work, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

And for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the said Contract Agreement, or in the Work to be performed thereunder, or the Specifications accompanying the same shall in any wise affect the obligations under this Contract Agreement or Bond, and notice is hereby waived of any such damage, extension of time, alteration or addition to the terms of the Contract Agreement or to the Work or to the Contract Documents.

This bond is given pursuant to and in accordance with the provisions of O.C.G.A. Section 36-91-1 *et seq.* and all the provisions of the law referring to this character of Bond as set forth in said Sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and seal, and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this ____ day of _____, 20___, executed in two counterparts.

CONTRACTOR – PRINCIPAL: [NAME OF CONTRACTOR]

By: _____

(name signed)

(name printed or typed)

Title: _____

Address: _____

Attest: _____

(name signed)

(name printed or typed)

Title: _____

(SEAL)

SURETY: [NAME OF SURETY]

By: _____

(name signed)

(name printed or typed)

Title: _____

Address: _____

Attest: _____

(name signed)

(name printed or typed)

Title: _____

(SEAL)

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

Surety and Insurers must have an A.M. Best Financial Strength Rating of A or higher, with a Financial Size Category of VII or higher.

END OF SECTION

STATE OF GEORGIA

BOND NO. _____

COUNTY OF CLARKE

KNOW ALL MEN BY THESE PRESENTS, that we, [Name of Contractor], as Principal, (hereinafter known as Contractor), and we, [Name of Surety] as Surety, are held and firmly bound unto the Unified Government of Athens-Clarke County, Georgia (hereinafter called the Owner), in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has entered into a certain Contract Agreement with said Owner, dated _____, 20____, for construction of RFP #00872, Athens-Clarke County Library AMH System, SPLOST 2011, Project #11 (hereinafter called the Contract), which Contract Agreement and the Contract Documents for said Work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, the condition of this obligation is such, that if said Contractor and all subcontractors to whom any portion of the Work provided for in said Contract Agreement is sublet and all assignees of said Contractor and of such subcontractors shall promptly make payments to all persons supplying them with labor, products, services, or supplies for or in the prosecution of the Work provided for in such Contract Agreement, or in any amendment or extension of or addition to said Contract Agreement, and for the payment of reasonable attorney's fees, incurred by the claimant in suits on this Bond, then the above obligation shall be void; otherwise, it shall remain in full force and effect.

HOWEVER, this Bond is subject to the following conditions and limitations:

- (a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the Work provided for in said Contract Agreement shall have a direct right of action against the Contractor and Surety on this Bond, which right of action shall be asserted in a proceeding, instituted in the county in which the Work provided for in said Contract Agreement is to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for its use and benefit against said Contractor and Surety or either party (but not later than one year after the final settlement of said Contract Agreement) in which action such claim or claims shall be adjudicated and judgement rendered thereon.
- (b) The Principal and Surety hereby designate and appoint the _____, as the agent of each party to receive and accept service of process or other pleading issued or filed in any proceeding instituted on this Bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.
- (c) In no event shall the Surety be liable for a greater sum than the penalty of this Bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract Agreement.

- (d) This Bond is given pursuant to and in accordance with provisions of O.C.G.A. Section 36-91-1 *et seq.* hereinafter, and all the provisions of law referring to this character of Bond as set forth in said Sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and seal, and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this ____ day of _____, 20____, executed in two counterparts.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

CONTRACTOR – PRINCIPAL: [NAME OF CONTRACTOR]

By: _____

(name signed)

(name printed or typed)

Title: _____

Address: _____

Attest: _____

(name signed)

(name printed or typed)

Title: _____

(SEAL)

SURETY: [NAME OF SURETY]

By: _____

(name signed)

(name printed or typed)

Title: _____

Address: _____

Attest: _____

(name signed)

(name printed or typed)

Title: _____

(SEAL)

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

Surety and Insurers must have an A.M. Best Financial Strength Rating of A or higher, with a Financial Size Category of VII or higher.

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ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to the Project Administrator which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

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

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Design Professional, approved by the Project Administrator, signed by Contractor and Owner, and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Project Administrator's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Design Professional* – shall be an individual or entity named as such in the Agreement.

18. *Drawings*--That part of the Contract Documents prepared or approved by Design Professional which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

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

20. *Field Order*--A written order issued by Project Administrator which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 01 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Liquidated Damages* – amounts shall be as stipulated in the Agreement and/or elsewhere in the General Requirements of the Specifications. Liquidated damages shall apply to the Contract Times for the Project or individual milestones as may stipulated in the General Requirements. Liquidated Damages shall be both additive and cumulative. Liquidated Damages shall end upon Substantial Completion, Completion of the Work associated with each Milestone Date, and/or upon final completion of the Work.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

30. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

31. *PCBs*--Polychlorinated biphenyls.

32. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

33. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

35. *Project Administrator*--The individual or entity with whom Owner has entered into the Agreement.

36. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

37. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

38. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

39. *Resident Project Representative*--The authorized representative of Project Administrator who may be assigned to the Site or any part thereof.

40. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

41. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

42. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

43. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

44. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

45. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

46. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

47. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Project Administrator, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, to provide the following: (i) the Owner full time, uninterrupted, continuous operation of the Work; and (ii) all required functional, performance, and operational or startup testing has been successfully demonstrated for all components, devices, equipment, and systems to the satisfaction of the Project Administrator in accordance with the requirements of the Specifications; and (iii) all required inspections and other work necessary for the Project Administrator to certify "substantially complete" have been completed. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

48. *Submittals* – All administrative documents, Shop Drawings, Samples, product data, manufacturer's literature, quality control documents, design related documents, record documents, contract close-out documents,

and/or any other specified document prepared or assembled by or for Contractor and submitted by Contractor to the Owner and/or Project Administrator.

49. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

50. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

51. *Supplier*--A manufacturer, fabricator, supplier, distributor, 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.

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

53. *Unit Price Work*--Work to be paid for on the basis of unit prices.

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

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

1.02 *Terminology*

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

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

C. *Day*

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

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Project Administrator's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to the Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

1. Agreement and bonds shall not be dated when delivered to the Owner for signature. Owner will date both the bonds and Agreement with the same date when the Agreement is executed.

2. Certified copies of Power of Attorney for the bonds must be dated prior to submittal to the Owner with a date which is within the previous fifteen (15) days.

3. Certified copies of Power of Attorney and bonds must each have original corporate seal of surety. Each counterpart bond shall have its own individual certified Power of Attorney.

4. Signature of attorney-in-fact for Surety Company on bonds must be one of persons authorized to sign on certified copies of Power of Attorney.

5. If Contractor is a corporation, Agreement and bonds must have original corporate seal of Contractor affixed, must show title of person signing on behalf of Contractor, and must be attested by Corporate Secretary or Assistant Corporate Secretary.

B. *Evidence of Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor and Owner shall each deliver to the other, with copies to each additional insured, certificates of

insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner will furnish to Contractor up to four printed or hard copies of the Contract Documents. Additional copies will be furnished, upon request, at the Owner's cost of reproduction.

B. Owner may also, if requested by Contractor, furnish Contractor with one electronic copy of the Drawings and other Contract Documents. Contractor agrees it will only use the same for performing the Work and will not disseminate the same except to its subcontractors where necessary to perform the Work. Contractor shall obtain written acceptance of any subcontractor to these limitations before disseminating the same to such subcontractor. Electronic copies of the Contract Documents will be provided as a convenience to Contractor. The Owner, Project Administrator, and/or Design Professional assume no liability and shall be held harmless for any discrepancies between the hard copy and electronic copy of the Contract Documents

2.03 *Commencement of Contract Times; Notice to Proceed*

A. Contract Times will commence to run on the date established in the Notice to Proceed. A Notice to Proceed may be given at any time within 120 days after the Effective Date of the Agreement.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run, in accordance with the Notice to Proceed.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Commencement of Contract Time (unless otherwise specified in the General Requirements), Contractor shall submit for timely review:

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. a preliminary Schedule of Submittals which indicates each required Submittal and the dates for submitting, time for reviewing and processing each Submittal (periodic Submittals may be listed by a common monthly date); and

3. a preliminary schedule of values for all of the work in a format acceptable to the Project Administrator and in accordance with the requirements specified in the General Requirements.

2.06 *Preconstruction Conference*

A. Preconstruction Conference shall be held at a Time and Place determined by the Project Administrator.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Project Administrator, and others as appropriate will be held to review for acceptability to Project Administrator as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Project Administrator.

1. The Progress Schedule will be acceptable to Project Administrator if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Project Administrator responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor. The Progress Schedule may subsequently be adjusted in accordance with Paragraph 6.04 and applicable provisions of the General Requirements.

2. Contractor's Schedule of Submittals will be acceptable to Project Administrator if it provides a workable arrangement for reviewing and processing the required submittals. The Schedule of Submittals may subsequently be adjusted in accordance with Paragraph 6.04 and applicable provisions of the General Requirements.

3. Contractor's Schedule of Values will be acceptable to the Project Administrator as to form and substance if it is provided in accordance with the requirements specified in the General Requirements.

B. Before any work at the site is commenced which is governed by the Construction Industry Licensing Board of Georgia (O.C.G.A. Section 43-14-1 et seq), or its rules or regulations, Contractor shall inform himself of those rules and regulations, and qualifications for licensure, and if requested shall deliver proof of compliance to the Owner and Project Administrator.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The individual components of the Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that 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 provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Project Administrator as provided in Article 9.

D. Where the word "similar" occurs on the Plans, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.

E. Each and every clause or other provision required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

F. Wherever 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 the Project Administrator 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 the Project Administrator any duty or authority to supervise or direct the furnishing or performance of Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.10 or any other provision of the Contract Documents.

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

H. All products (material or equipment) identified in the Contract Documents and all products incidental to the identified products, shall be new and unused and provided by Contractor unless specified otherwise.

I. 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.”

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Project Administrator, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Project Administrator, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Project Administrator any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Project Administrator before proceeding with any Work affected thereby.

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

B. Resolving Discrepancies

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

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

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

c. In resolving discrepancies within the Contract Documents, precedence shall be given in the following descending order:

1. Change Orders,
2. Work Change Directives,
3. Field Orders,
4. Written interpretations and clarifications, issued by the Project Administrator,
5. Notice to Proceed
6. Addenda
7. Contract Agreement
8. General Conditions
9. Specifications
10. Drawings (Figure dimensions on Drawings shall take precedence over scale dimensions and detailed drawings shall take precedence over general drawings.)
11. Bidding Requirements

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Project Administrator's and/or Design Professional's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Design Professional's written interpretation or clarification, issued by the Project Administrator.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Design Professional or Design Professional's consultants, including electronic media editions; or
2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and specific written verification or adaptation by Design Professional.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Design Professional to Contractor or Contractor to Owner or Design Professional that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

D. Owner has begun to obtain all lands, rights-of-way and easements as indicated in the Contract Documents. However, delays obtaining such lands may occur. If Owner is unable to obtain lands as indicated in the Contract Documents, Owner will notify the Contractor of those lands which are not yet acquired and those areas where lands are available. Contractor shall begin the Work upon such land and rights-of-way as Owner has acquired in accordance with the Notice to Proceed.

4.02 *Subsurface and Physical Conditions*

A. Reports and Drawings:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) used in preparing the Contract Documents.

3. It shall be the Contractor's responsibility to review the "Report of Geotechnical Exploration" and become familiar with the existing Subsurface and Physical Conditions at each site.

4. Technical Data for this contract is as follows:

a. the "Subsurface Exploration" report; *As Enumerated in Section 000350 or elsewhere in the Contract Documents.*

B. Limited Reliance by Contractor on Technical Data Authorized: 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 above. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner, Project Administrator, or Design Professional, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

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

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

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

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

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

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *Project Administrator's Review:* After receipt of written notice as required by Paragraph 4.03.A, Project Administrator will promptly review the pertinent condition, 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 Project Administrator's findings and conclusions.

C. Possible Price and Times Adjustments

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

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

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

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew or should have known of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

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

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Project Administrator, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Design Professional and/or Project Administrator by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in these General Conditions:

1. Owner, Design Professional, and/or Project Administrator shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

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

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and Project Administrator. Project Administrator and Owner will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Project Administrator concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment may be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

C. The dimensions and descriptions given on the Drawings for adjacent work by others, if any, (including any existing facilities or utilities previously constructed for Owner) are based on the design drawings and not as-built drawings. Prior to commencing the Work, the Contractor shall verify all as-built conditions and information whenever existing facilities or utilities may impact the Work. Failure of Contractor to so verify all as-built

conditions prior to commencing the Work shall bar Contractor from later seeking additional compensation for conflicts with existing facilities or utilities.

D. Prior to the construction or installation of any proposed facility or pipeline, the Contractor shall expose all existing utilities true to their vertical and horizontal location, within the vicinity of the Work. In order to avoid conflicts between existing and proposed facilities or utilities, the Contractor shall either relocate the existing or proposed utility on a temporary or permanent basis, or shall take whatever means necessary to protect the existing facilities or utilities during the installation of proposed utilities, as approved by the Project Administrator. No separate payment will be made for the relocation of existing utilities or for any work associated with the protection of existing facilities or utilities.

4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Project Administrator's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Project Administrator whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Project Administrator may check the lines, elevations, reference marks, batter boards, etc., set by Contractor, and Contractor shall correct any errors disclosed by such check. Such a check shall not be considered as approval of Contractor's work and shall not relieve Contractor of the responsibility for accurate construction of the entire Work. Contractor shall furnish personnel to assist Project Administrator and Design Professional in checking lines and grades.

C. The Contractor shall review the Contract Documents and determine the presence and location of any property or rights-of-way monuments or markers, and assess the possibility of disruption to these monuments or markers. It will be the Contractor's responsibility to flag, erect guard post, or provide offset references for the protection or the re-monumentation of these property or rights-of-way monuments or markers. In the event these monuments or markers are covered over or disrupted, it will be the Contractor's responsibility to re-establish those monuments or markers of property or rights-of-way, which were present prior to Work on the project.

D. It shall be the Contractor's responsibility to verify all reference points shown on the Contract Documents prior to beginning Work on the site. This verification shall be conducted by professionally qualified personnel in a manner which will verify the accuracy of the information shown in the Contract Documents. On projects which involve the connection to, or additions to existing structures, the elevations of these existing structures shall also be verified. Any findings which differ from those shown on the Contract Documents shall be submitted in writing to the Project Administrator for resolution.

E. Additional surveys necessary for the construction staking shall be performed by the Contractor, the cost of which shall be incorporated into the appropriate items of Work. On projects in which payment is classified by depth of cut, the construction staking shall be performed in a manner that will allow for the determination of cut classification. During construction of the project, the Contractor shall keep a daily log and record of the location of all underground pipes, all structures, and any deviation from the Drawings. The Contractor shall keep and furnish this daily log and record in a manner which will allow the Project Administrator to incorporate these items into the Contract Documents.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Paragraph 4.02.A.4 for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Design Professional in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* 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 herein, Paragraph 4.02.A.4. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Design Professional, or any of their Related Entities with respect to:

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

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Project Administrator (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Project Administrator and Design Professional concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor 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 on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work, based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may issue a Work Change Directive or Change Order as appropriate. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Project Administrator, and Design Professional, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment is made by the Owner or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by a single Surety that is 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 Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Project Administrator and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

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

1. All bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the surety or insurance company having its place of business in the State of Georgia and in all ways complying with the insurance laws of the State of Georgia. Surety shall be in good standing with Georgia's Insurance Commissioner's Office.

2. Surety and Insurers must have an A.M. Best Financial Strength Rating of A or higher, with a Financial Size Category of VII or higher.

3. The surety shall have an underwriting limitation in Circular 570 in excess of the Contract Amount.

5.03 Certificates of Insurance

A. Contractor shall deliver to Owner, with copies to each additional insured identified in Section 000828, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in Section 000828, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain, if any.

5.04 Contractor's Liability Insurance

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents,

whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner, Project Administrator, and Design Professional, and any other individuals or entities identified in Section 000828, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in Section 000828 or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in Section 000828 to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.
 - a. Contractor shall furnish Owner and each other additional insured identified in Section 000828, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

C. The limits of liability for the insurance required by paragraph 5.04.B.2 of the General Conditions shall provide coverage specified in Section 000828 or greater where required by Laws and Regulations.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

A. Contractor shall purchase and maintain property insurance as required in Section 000828.

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 by Contractor will protect Owner, Contractor, Subcontractors, Project Administrator, and Design Professional, and all other individuals or entities identified herein as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. 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 Contractor as trustee or otherwise payable under any policy so issued.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner shall adjust and settle the loss with the insurers.

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

A. If Owner has any objection to the coverage afforded by or other provision of the insurance required to be purchased and maintained by Contractor in accordance with this Article 5 on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof within ten days of the date of delivery of such certificate to Owner in accordance with Paragraph 2.01. Contractor will provide such additional information in respect of insurance provided by Contractor as Owner may reasonably request.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Contractor shall supervise, provide quality control, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Design Professional in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent Superintendent thereto who shall not be replaced, except under extraordinary circumstances, without written notice to Owner and Project Administrator. Contractor shall also designate, in writing, a representative, hereinafter referred to as Project Manager, assigned to the Project on a full-time basis during execution of the Work who shall have authority to act on behalf of Contractor, including executing the orders or directions of the Project Administrator and/or Design Professional without delay. This Superintendent and/or Project Manager shall have full authority to promptly supply products, tools, plant equipment, and labor as may be required to diligently prosecute the Work. All communications given to or received from the Superintendent and/or the Project Manager shall be binding on Contractor.

C. If at any time during the Project the Superintendent or Project Manager leaves the Project site while Work is in progress; Project Administrator shall be notified and provided with the name of Contractor's representative having responsible charge.

D. Contractor shall also designate the person responsible for Contractor's quality control while Work is in progress. Project Administrator shall be notified in writing prior to any change in quality control representative assignment.

E. Prior to the execution of the Agreement, Contractor shall furnish to the Project Administrator the names, resumes, 24 hour contact information and other relevant information associated with the Project Manager and the Superintendent that are to be assigned to this project. The Project Manager and Superintendent must be acceptable to the Owner and Project Administrator.

6.02 Labor; Working Hours

A. Contractor shall provide competent, skilled, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Contractor shall, upon demand from the Project Administrator, immediately remove any manager, superintendent, foreman or workman whom the Project Administrator or Owner may consider incompetent or undesirable

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Project Administrator.

C. Regular working hours are defined as 8 hours per day, Monday through Friday, excluding holidays, occurring between the hours of 7:00 AM and 7:00 PM, or as specified elsewhere. Requests to work other than regular working hours shall be submitted to Project Administrator not less than 48 hours prior to any proposed weekend work or scheduled extended work weeks. Occasional unscheduled overtime on weekdays may be permitted provided reasonable notice is given to Project Administrator. The performance of all Work shall comply with Athens-Clarke County ordinances, including but not limited to, the Noise Control Ordinance, ACC Code Section 3-5-24.

D. Contractor shall pay all extra costs incurred by the Owner associated with work, outside of normal working hours, including additional support services, inspection services, testing services, utilities or other applicable costs. The cost associated with the Owner's inspection overtime will be in the range of \$75.00 to \$120.00 per hour per individual, depending upon individuals assigned to the Project, the type of work being inspected, and the date of the invoice; i.e., allowing for salary escalation. Contractor will not be responsible for extra costs associated with inspection overtime for work in excess of 40 hours per week when such overtime work is explicitly required by the Contract Documents.

E. Except in the case of emergencies or other unusual circumstances, no work shall be permitted on the project on Sunday.

F. Project Administrator will determine to what extent extraordinary onsite personnel work is required during Contractor's overtime work or working hours outside regular scheduled work hours.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All products provided on this Project shall be products currently manufactured by the manufacturer, i.e., products shall not be discontinued or out-of-date products nor shall they be of the last production run of the product. Contractor shall incorporate the previous sentence in any contract or agreement between Contractor and subcontractor or supplier supplying products provided on this Project. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Project Administrator, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

D. Without limiting the responsibility or liability of the Contractor pursuant to this agreement, all warranties given by manufacturers on materials or equipment incorporated in the work are hereby assigned by the Contractor to the Owner. Such assignment shall be effective upon completion of Contractor's warranty period. If requested, the Contractor shall execute formal assignments of said manufacturer's warranties to the Owner. All such warranties shall be directly enforceable by the Owner. Such assignment shall in no way affect the Contractor's responsibilities and duties during the warranty period.

6.04 *Progress Schedule*

A. Contractor shall provide all resources, labor, materials, equipment, services, etc. necessary to adhere to the Progress Schedule established in accordance with Paragraph 2.07 and the General Requirements as updated and adjusted from time to time as provided below.

1. Contractor shall submit to Project Administrator for acceptance (to the extent indicated in Paragraph 2.07 and the General Requirements) an updated Progress Schedule and an updated Schedule of Submittals with each partial payment request, but no less than monthly. Contractor's failure to provide acceptable updated Progress Schedule and Schedule of Submittals will delay processing of the pay request until receipt of the acceptable updated Progress Schedule and/or an updated Schedule of Submittals. Such updates and adjustments shall comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

3. If the Progress Schedule reflects a completion date prior to the completion date established by the Agreement, this shall afford no basis to claim for delay should Contractor not complete the Work prior to the projected completion date. Instead, all "float" between the completion date in Contractor's schedule and the completion date established in the Agreement shall belong to and is exclusively available to the Owner. Should a change order be executed with a revised completion date, the Progress Schedule shall be revised to reflect the new completion date.

4. Number of anticipated abnormal weather conditions, as defined in the General Requirements, shall be included on the critical path of Project Schedule.

6.05 *Substitutes and "Or-Equals"*

See General Requirements of the Specifications for Substitution Procedures.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier or other person or organization, (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, that Owner may have reasonable objection. Acceptance of any Subcontractor, other person or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection. If more than twenty-five percent of the work (as measured by dollar value and not including specialty work that is customarily subcontracted) is to be performed by one or more subcontractors then Contractor is obligated to notify Owner in writing of this intent with the submission of the Bid and to provide such supplemental information within five days of the bid as outlined under the Bidding Requirements.

B. If the General Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the General Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Project Administrator to reject defective Work.

C. Contractor shall be fully responsible to Owner, Project Administrator and/or Design Professional for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner, Project Administrator, or Design Professional and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner, Project Administrator, and/or Design Professional to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Owner, Project Administrator and/or Design Professional through Contractor.

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

G. All Work performed for Contractor by a Subcontractor or Supplier shall 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 Design Professional.

H. Owner, Project Administrator, or Design Professional may furnish to any Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to Contractor in accordance with Contractor's Applications for Payment.

I. Specialty Subcontractors: Contractor shall utilize the services of Specialty Subcontractors on those parts of the Work which is declared specialty work in Specifications and which, under normal contracting practices, is best performed by Specialty Subcontractors, as required by the Project Administrator in Project Administrator's sole discretion, at no additional cost to the Owner. If Contractor desires to perform specialty work, Contractor shall submit a request to the Owner, accompanied by evidence that Contractor's own organization has successfully performed the type of work in question, is presently competent to perform the type of work, and the performance of the work by Specialty Subcontractors will result in materially increased costs or inordinate delays.

6.07 *Patent Fees and Royalties*

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

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Project Administrator, and Design Professional, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits and Utility Connections*

A. Unless otherwise provided in the Contract Documents or these General Conditions, Contractor shall obtain and pay for all construction permits, utility relocations, and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits, utility relocations, and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all connection fees of utility owners for providing new permanent services, not service relocations, to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Design Professional shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and

charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's 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 3.03.

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

D. Contractor shall perform those duties as they relate to Section 36-91-92 of the Official Code of Georgia Annotated, including filing the Notice of Commencement. Contractor shall provide Owner and Project Administrator with proof of having performed these duties before any progress payments or final payment shall be considered due and payable to the Contractor. The Contractor shall respond to all requests for copies of a Notice of Commencement. Should the Owner or Project Administrator receive such a request, this request will be forwarded to the Contractor for further handling. The name and address of the Owner shall be as stated in paragraph (c) of this Article. The name and general description of the Project shall be as stated in the Invitation to Bid.

E. Where professional engineering and/or architectural services are required in connection with any of the components required by the Contract, all Bidders and component suppliers must make certain that there is full compliance with all applicable laws of the State of Georgia and any other state governing professional engineering and/or architecture. The Owner, Project Administrator, and Design Professional do not warrant that any entity listed as an acceptable manufacturer is or will be in compliance with such laws.

F. Any fines levied against the Owner for failure of by Contractor to properly maintain required NPDES erosion and sediment control measures or any other related requirements will be doubled in their amounts and deducted as set-offs from payments due Contractor.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Project Administrator, and Design Professional, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Project Administrator, and Design Professional, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site Record Documents as specified in the General Requirements. Upon completion of the Work, these record documents, Samples, and Shop Drawings shall be delivered to Project Administrator for Owner.

6.13 *Safety and Protection*

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

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

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Design Professional or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. 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 Project Administrator has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

E. The property, improvements or facilities at the site shall be replaced or restored to a condition as good as when Contractor entered upon the Work. In case of failure on the part of Contractor to restore such property,

or make good such damages or injury, the Owner may, after 48 hours written notice, or sooner in the case of an emergency, proceed to repair, rebuild, or otherwise restore such property, improvements or facilities as may be deemed necessary. The cost thereof will be deducted from any monies due or which may become due Contractor under this Contract.

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Project Administrator prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Project Administrator determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings, Samples and other Submittals*

A. Contractor shall submit Submittals to both Project Administrator and Design Professional for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Project Administrator may require.

1. Shop Drawings

a. Submit number of copies specified in the Specifications.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Project Administrator the services, materials, and equipment Contractor proposes to provide and to enable Project Administrator to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples:

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Project Administrator may require enabling Project Administrator to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where any Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Project Administrator's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

- a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
- c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
- d. 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.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Project Administrator specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Project Administrator for review and approval of each such variation.

D. Project Administrator's Review

1. Project Administrator will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Project Administrator. Project Administrator's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Project Administrator's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Project Administrator's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Project Administrator has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Project Administrator's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Project Administrator 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 Project Administrator on previous submittals.

F. Excessive Submittal Resubmission: Project Administrator will record time required by Project Administrator and/or Design Professional for excessive Submittal review occasioned by Contractor's resubmission, in excess of ONE (1) resubmission of any required Submittal, caused by unverified, unchecked or unreviewed, incomplete, inaccurate or erroneous, or nonconforming Submittals. Upon receipt of Project Administrator's accounting of time and costs, Contractor will reimburse Owner for the charges of Project Administrator's and/or Design Professional's review for excessive resubmissions through set-offs from the recommended Owner payments to Contractor as established in Paragraph 14.02.D.1.c. of these General Conditions.

G. In the event that Contractor requests a substitution for a previously approved item, Contractor shall reimburse Owner for Project Administrator's and/or Design Professional's charges for such time as may be required to perform all reviews of the substitute item, unless the change is specifically requested by the Owner.

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Project Administrator and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

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

1. observations by Project Administrator and/or Design Professional;
2. recommendation by Project Administrator and/or Design Professional or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Project Administrator or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Submittal or the issuance of a notice of acceptability by Project Administrator and/or Design Professional;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Project Administrator, and Design Professional, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or

anyone for whose acts any of them may be liable. If through the negligent act or omission on the part of Contractor, any other contractor or any subcontractor shall suffer loss or damage on the Work, Contractor shall settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against Owner, Project Administrator, and/or Design Professional on account of any damage alleged to have been sustained, Owner shall notify Contractor, who shall indemnify and save harmless Owner, Project Administrator, and/or Design Professional against any such claims.

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

C. Contractor, Subcontractors, Suppliers and others on the Project, or their sureties, shall maintain no direct action against the Project Administrator and/or Design Professional, their officers, employees, affiliated corporations, consultants, and Subcontractors, for any claim arising out of, in connection with, or resulting from the engineering or other services performed. Only the Owner will be the beneficiary of any undertaking by the Project Administrator and/or Design Professional.

6.21 *Delegation of Professional Design Services*

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

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Design Professional will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Project Administrator.

C. Owner and Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Design Professional have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Project Administrator's and/or Design Professional's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Project Administrator's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site with Owner's employees or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that may be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Project Administrator and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

7.02 Coordination

A. If Owner contracts with others for the performance of other work on the Site, Contractor shall attend and participate in coordination meetings with the other on-site contractors.

B. Unless otherwise provided in these General Conditions, Owner shall have sole authority and responsibility for such coordination with other contractors.

7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is directly liable to Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

7.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any separate contractor at the site, or should any claim arising out of Contractor's performance of the Work at the site be made by any separate contractor against Contractor, Owner, Project Administrator, and/or Design Professional or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Project Administrator, and/or Design Professional and the officers, directors, employees, agents, and other consultants of each and any of them harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of or resulting from any action, legal or equitable, brought by any separate contractor against Owner, Project Administrator, and/or Design Professional or the officers, directors, employees, agents, or other consultants of each and any of them to the extent based on a claim arising out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other claim, Contractor shall seek remedy directly from such separate contractor and shall not seek remedy or institute any action, legal or equitable, against Owner, Project Administrator, and/or Design Professional or the officers, directors, employees, agents, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from Owner, Project Administrator, and/or Design Professional or the officers, directors, employees, agents, or other consultants of each and any of them on account of any such damage or claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Project Administrator, and/or Design Professional and the officers, directors, employees, agents, or other consultants of each and any of them for any delay, disruption, interference or hindrance caused by any separate contractor.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Project Administrator.

8.02 Replacement of Project Administrator or Design Professional

A. In case of termination of the employment of Project Administrator and/or Design Professional, Owner shall appoint a Project Administrator and/or Design Professional whose status under the Contract Documents shall be that of the former Project Administrator and/or Design Professional.

8.03 Furnish Data

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

8.04 Pay When Due

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

8.05 Lands and Easements; Reports and Tests

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Design Professional in preparing the Contract Documents.

8.06 Insurance

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. 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 these General Conditions.

ARTICLE 9 - PROJECT ADMINISTRATOR'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Project Administrator will be Owner's representative. The duties and responsibilities and the limitations of authority of Project Administrator as Owner's representative are set forth in the Contract Documents.

9.02 *Visits to Site*

A. Project Administrator will make visits to the Site in order to observe the progress of the Work. Based on information obtained during such observations, Project Administrator, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Project Administrator will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Project Administrator's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Project Administrator will keep Owner informed of the progress of the Work.

B. Project Administrator's visits and observations are subject to all the limitations on Project Administrator's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Project Administrator's visits or observations of the Work, Project Administrator will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. The Owner may also assign a Resident Project Representative to assist Project Administrator in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project

Representative and assistants will be as provided in the Contract Documents, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09.

9.04 *Authorized Variations in Work*

A. Project Administrator may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Project Administrator's authority and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Project Administrator's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Project Administrator's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Project Administrator's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

A. Project Administrator will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by Contractor, and the written decisions of Project Administrator on such matters will be final, binding on Contractor and not subject to appeal (except as modified by Project Administrator to reflect changed factual conditions).

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Project Administrator will be the initial interpreter of the requirements of the Contract Documents and determine the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Project Administrator in writing in accordance with the Contract Documents.

B. Project Administrator will, with reasonable promptness, render a written decision, and furnish information and/or clarification as to the requirements of the Contract Documents. If Contractor believes that any such decision, information, or clarification entitles it to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05.

C. Project Administrator's written response on the issue referred will be final and binding on Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter of the Contract Documents under this Paragraph 9.08, Project Administrator will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation rendered in good faith in such capacity.

9.09 *Limitations on Project Administrator's Authority and Responsibilities*

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

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

C. Project Administrator will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Project Administrator's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

1. Owner may, in anticipation of possibly ordering an addition, deletion or revision to the Work, request Contractor to prepare a proposal of cost and times to perform Owner's contemplated changes in the Work. Contractor's written proposal shall be transmitted to the Project Administrator promptly, but not later than fourteen days after Contractor's receipt of Owner's written request and shall remain a firm offer for a period not less than sixty days after receipt by Project Administrator.

2. Contractor is not authorized to proceed on an Owner contemplated change in the Work prior to Contractor's receipt of a Change Order (or Work Change Directive) incorporating such change into the Work.

3. Owner's request for proposal or Contractor's failure to submit such proposal within the required time period will not justify a claim for an adjustment in Contract Price or Contract Time.

4. The Owner shall not be liable to the Contractor for any costs associated with the preparation of proposal associated with Owner's contemplated changes in the Work.

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Project Administrator and/or Design Professional covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision, interpretation, or clarification rendered by Project Administrator pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

B. In signing a Change Order, the Owner and Contractor acknowledge and agree that:

1. the stipulated compensation (Contract Price or Contract Time, or both) set forth in the Change Order includes payment for (i) the Cost of the Work covered by the Change Order, (ii) Contractor's fee for overhead and profit, (iii) interruption of Progress Schedules, (iv) delay and impact, including cumulative impact, on other work under the Contract Documents, and (v) extended home office and jobsite overhead;

2. the Change Order constitutes full mutual accord and satisfaction for the change to the Work;

3. no reservation of rights to pursue subsequent claims on the Change Order will be made by either party; and

4. no subsequent claim or amendment of the Contract Documents will arise out of or as a result of the Change Order.

10.04 *Notification to Surety*

A. 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. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Submittal of Claims to Project Administrator*:: All Claims asserted by the Contractor under or related to the Contract, except those waived pursuant to Paragraph 14.09, shall be referred to the Project Administrator for decision. A decision by Project Administrator shall be required as a condition precedent to any exercise by Contractor of any rights or remedies it may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims. Nothing in this Paragraph 10.05.A shall be deemed to require the Owner to refer to the Project Administrator for decision any Claims it may assert against the Contractor under or

related to the Contract, including any claims for liquidated damages the Owner may assert pursuant to Paragraph 4.03 of the Agreement.

B. Notice and Claim Submittal: Written notice stating the *general nature* of each Claim shall be delivered by the Contractor to Project Administrator and the Owner promptly (but in no event later than 10 days) after the start of the event giving rise thereto. The responsibility to substantiate its Claims shall rest with the Contractor. A Claim Submittal including the amount or extent of the Claim, with supporting data shall be delivered to the Project Administrator and the Owner within 20 days (and monthly thereafter for continuing events) after the start of such event (unless Project Administrator allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. Nothing in this Paragraph 10.05.B shall be deemed to require the Owner to provide written notice of any Claims it may assert against the Contractor under or related to the Contract, including any claims for liquidated damages the Owner may assert pursuant to Paragraph 4.03 of the Agreement.

C. Action of Project Administrator: Project Administrator will review each Claim asserted by the Contractor and, within 30 days after receipt of the Contractor's submittal, including supporting data, if any, take one of the following actions in writing:

1. deny the Contractor's Claim in whole or in part,
2. approve the Contractor's Claim, or

3. notify the Contractor that the Project Administrator is unable to resolve the Claim due to the nature and/or circumstances of the Claim.. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

Nothing in this Paragraph 10.05.C shall be deemed to require the Project Administrator's review or action on any Claims Owner may assert against the Contractor under or related to the Contract, including any claims for liquidated damages the Owner may assert pursuant to Paragraph 4.03 of the Agreement.

D. In the event that Project Administrator does not take action on a Claim asserted by the Contractor within said 30 days, the Claim shall be deemed denied.

E. Project Administrator's-written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Contractor, unless Contractor invokes the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05, including within the required time limits.

G. Contractor, Subcontractors, Suppliers and others on the Project, or their surety, shall maintain no direct action against the Project Administrator and/or Design Professional or their officers, employees, affiliated corporations, and Subcontractors, for any claim arising out of, in connection with, or resulting from the services performed. Only the Owner will be the beneficiary of any undertaking with these parties.

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

11.01 *Cost of the Work*

A. Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim.

Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

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 outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Project Administrator, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Project Administrator, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

1. Full rental cost for rented, leased, and/or owned equipment shall not exceed the rates listed in the Rental Rate Blue Book published Equipment Watch, a unit of Primedia, Inc., as adjusted to the regional area of the Project. The most recent published edition in effect at the commencement of the actual equipment use shall be used.

2. Rates shall apply to equipment in good working condition. Equipment not in good condition, or larger than required, may be rejected by Project Administrator or accepted at reduced rates.

3. Equipment in Use: Actual equipment use time documented by the Project Administrator shall be the basis that the equipment was on and utilized at the Project site. In addition to the leasing rate above,

equipment operational costs shall be paid at the estimated operating cost, payment category (and the table below), and associated rate set forth in the Blue Book if not already included in the lease rate.

The hours of operation shall be based upon actual equipment usage to the nearest quarter hour, as recorded by the Project Administrator.

- 4. Equipment when idle (Standby): Idle or standby equipment is equipment on-site or in transit to and from the Work site and necessary to perform the Work under the modification but not in actual use. Idle equipment time, as documented by the Project Administrator, shall be paid at the leasing rate determined in 11.01.A.5.c, excluding operational costs.
- 5. Where a breakdown occurs on any piece of equipment, payment shall cease for that equipment and any other equipment idled by the breakdown. If any part of the Work is shutdown by the Owner, standby time will be paid during non-operating hours if diversion of equipment to other Work is not practicable. Project Administrator reserves the right to cease standby time payment when an extended shutdown is anticipated.

Actual Usage	Blue Book Payment Category
Less than 8 hours	Hourly Rate
8 or more hours but less than 7-days	Daily Rate
7 or more days but less than 30 days	Weekly Rate
30 days or more	Monthly Rate

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

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

f. Losses and damages (and related expenses) caused by damage to any of the Work that has been completed and accepted by the Owner, 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 5.06.D.), 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 to the Work that has been accepted by Owner requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services, a fee proportionate to that stated in Paragraph 12.01.c.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks,

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

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Project Administrator an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Project Administrator.

B. Cash Allowances

1. Contractor agrees that:

- a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

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

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

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

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

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

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

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

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

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim by the Contractor for an adjustment in the Contract Price shall be based on written notice submitted by the Contractor to the Project Administrator and the Owner in accordance with the provisions of Paragraph 10.05.

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents:

a. by a lump sum value fixed by the Owner, which may include an allowance for overhead and profit (not necessarily in accordance with Paragraph 12.01.C.2); or

b. by new unit price items fixed by the Owner (not necessarily derived in accordance with Paragraph 11.01); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and when this method is selected by the Owner, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
- b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent based on subcontractor's actual Cost of the Work;
- c. where one or more tiers of subcontracts are for Change Order items, on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor; except the maximum total allowable cost to Owner shall be the Cost of the Work plus a maximum collective aggregate fee for Contractor and all tiered Subcontractors of 26.8 percent;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Time*

A. The Contract Times may only be changed by a Change Order. Any Claim by Contractor for an adjustment in the Contract Times shall be based on written notice submitted by the Contractor to the Project Administrator and the Owner in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

C. All time limits stated in the Contract Documents are of the essence of the Agreement. Contractor shall proceed with the Work at a rate of progress which will insure completion within the Contract Time. It is expressly understood and agreed by and between Contractor and the Owner, that the Contract Time for the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions, and other factors prevailing in the locality of the Work. If Contractor shall fail to perform the Work required within the Contract Time, or extended Contract Time if authorized by Change Order, then Contractor shall pay to the Owner the full amount of liquidated damages specified in the Contract Documents.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times may be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, freight embargo, acts of war (declared or not declared), or acts of God.

B. If Owner, Project Administrator, and/or Design Professional, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor may be entitled to an equitable adjustment in the Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract

Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.B.

C If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor may be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Project Administrator, and/or Design Professional and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner, Project Administrator, and/or Design Professional has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Project Administrator, and/or Design Professional, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, 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 therewith as applicable.

13.03 Tests and Inspections

A. Contractor is responsible for the initial and subsequent inspections of Contractor's Work to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall give Project Administrator 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. Contractor shall establish an inspection program and a testing plan acceptable to the Project Administrator and shall maintain complete inspection and testing records available to Project Administrator.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all non-contractor inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body,

Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Project Administrator the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's, Project Administrator's, and/or Design Professional's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Project Administrator.

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

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless: 1) Contractor has given Project Administrator timely notice of Contractor's intention to cover the same and Project Administrator has not acted with reasonable promptness in response to such notice; and 2) Contractor has adequate photographic documentation to show the covered work has been provided in accordance with the Contract Documents.

G. Concealed Work: Contractor shall photograph all work that will be concealed or covered immediately prior to it being covered. Photographs of concealed items shall show and be able to locate all items that were concealed without having to uncover the work. Contractor shall take and submit as many exposures as necessary to photograph and accurately portray all concealed work. Photos of concealed work are in addition to providing the required notices for testing and inspections.

13.04 *Uncovering Work*

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

B. If Project Administrator considers it necessary or advisable that covered Work be observed by Project Administrator or inspected or tested by others, Contractor, at Project Administrator's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Project Administrator may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective and the Contractor had adequately photographed the work prior to covering in accordance with 13.03.G to show that it was not defective, then Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If Contractor does not have adequate photographic documentation of the covered work to demonstrate its condition, then the Contractor shall not be allowed an increase in the Contract Price nor an extension of Contract Time. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract

Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

B. If Owner stops Work under Paragraph 13.05.A, Contractor shall be entitled to no extension of Contract Time or increase in Contract Price.

13.06 *Correction or Removal of Defective Work*

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

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

C. Contractor shall promptly segregate and remove rejected products from the Site.

13.07 *Correction Period*

A. If within one year after the date of Final Payment (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Final Payment of all the Work, the correction period for that item may start to run from an earlier date if so specifically provided elsewhere in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other rights or remedies of Owner as to defective work under the Contract Documents or applicable law. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

F. Within no more than ten months after Substantial Completion Contractor's Project Manager and Superintendent shall attend and actively participate in an on-site half day Lessons Learned workshop to be led or conducted by the Project Administrator.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time as defined by the Project Administrator after written notice from Project Administrator to correct defective Work or to remove and replace rejected Work as required by Project Administrator in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Project Administrator's and/or Design Professional's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments**A. Applications for Payments**

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Project Administrator, and to Design Professional, unless directed otherwise, 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.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored (i.e. stored materials) at the Site, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. If payment is requested for materials stored at a location other than the Site, in addition to the above requirements the Application for Payment shall also be accompanied by: a) Right of Entry from the property owner, for the alternate location, that allows the Owner to enter the property to review and/or retrieve, if necessary, materials; and b) Contractor will be responsible for cost of time and travel expenses of the Project Administrator, Design Professional, or testing agency to review the stored materials. The Owner shall not be required to approve any alternate location for storage of materials if all the above requirements are not met or the Owner has other reasonable objections to the alternate storage locations.

3. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Project Administrator will, within 20 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 Project Administrator's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Project Administrator's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Administrator to Owner, based on Project Administrator's observations on the Site of the executed Work as an experienced and qualified professional and on Project Administrator's review of the Application for Payment and the accompanying data and schedules, that to the best of Project Administrator's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, 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 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Project Administrator's responsibility to observe the Work.

3. By recommending any such payment Project Administrator will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Project Administrator in the Contract Documents; or

b. 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.

4. Project Administrator's review of Contractor's Work for neither the purposes of recommending payments nor Project Administrator's recommendation of any payment, including final payment, will impose responsibility on Project Administrator:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Project Administrator may refuse to recommend the whole or any part of any payment if, in Project Administrator's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Project Administrator may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Project Administrator's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Project Administrator has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Owner and Contractor agree that all partial payments and final payments shall be subject to the Georgia Prompt Pay Act, as originally enacted and amended, and as set forth in O.C.G.A. 13-11-1 through 13-11-11, except as provided below to the extent authorized by law:

a. Interest Rate and Fees: For purposes of computing interest on late payments, the rate of interest shall be one-half percent per month or a pro-rata fraction thereof on the unpaid balance as may be due. There shall be no award of attorney's fees pursuant to the Georgia Prompt Pay Act under the Agreement.

b. Payment Periods:

1. When Contractor has performed in accordance with the provisions of these Contract Documents, the Owner shall pay Contractor within 45 days of receipt by the Owner or the Owner's representative of any properly completed Application for Payment, based upon work completed or service provided pursuant to the terms of these Contract Documents.

2. When a subcontractor has performed in accordance with the provisions of its subcontract and the subcontract conditions precedent to payment have been satisfied, Contractor shall pay to that subcontractor and each subcontractor shall pay to its subcontractor, within ten days of receipt by Contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractors work and materials based on work completed or service provided under the subcontract, less retainage expressed as a percentage, but such retainage shall not exceed that retainage being held by the Owner, provided that the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete its work as Contractor in its reasonable discretion may require, including but not limited to a payment and performance bond.

c. Interest on Late Payment: Except otherwise provided in these Contract Documents and/or in O.C.G.A. 13-11-5, if a periodic or final payment to Contractor is delayed by more than the time allotted in Paragraph b. of this Prompt Payment Clause or if a periodic or final payment to a subcontractor is delayed more than ten days after receipt of periodic or final payment by Contractor or Subcontractor, the Owner, Contractor, or Subcontractor, as the case may be, shall pay interest to its Contractor, or Subcontractor beginning on the day following the due dates as provided in Paragraph b. of this Prompt Payment Clause at the rate of interest as provided herein. Interest shall be computed per month or a pro-rata fraction thereof on the unpaid balance. There shall be no compounded interest. No interest is due unless the person or entity being charged interest received "Notice" as provided in Paragraph d. of this Prompt Payment Clause. Acceptance or progress payments or final payment shall release all claims for interest on said payments.

d. Notice of Late Payment and Request of Interest: Any person or entity asserting entitlement to interest on any periodic or final payment pursuant to the provisions of this Prompt Payment Clause shall provide "notice" to the person or entity being charged interest of the charging party's claim to interest on late payment. "Notice" shall be in writing, served by U.S. Certified Mail - Return Receipt Requested at the time the properly completed Application for Payment is received by the Owner or Owner's representative, and shall set forth the following:

1. A short and concise statement that interest is due pursuant to the provisions of the Georgia Prompt Pay Act and this Prompt Payment Clause;
2. The principal amount of the periodic or final payment which is allegedly due to the charging party; and
3. The first day and date upon which the charging party alleges that said interest will begin to accrue, pursuant to the provisions of the Georgia Prompt Pay Act and this Prompt Payment Clause.

These "Notice" provisions are of the essence; therefore, failure to comply with any requirement as set forth in the Prompt Payment Clause precludes the right to interest on any alleged late payment to which said "Notice" would otherwise apply.

2. Integration with the Georgia Prompt Pay Act: Unless otherwise provided in these Contract Documents, the parties hereto agree that these provisions of this Prompt Payment Clause supersede and control all provisions of the Georgia Prompt Pay Act (O.C.G.A. 13-11-1 through 13-11-11 (1994)), as originally enacted and as amended, and that any dispute arising between the parties hereto as to whether or not the provisions of this contract or the Georgia Prompt Pay Act control will be resolved in favor of these Contract Documents and its terms.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Project Administrator because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended;

d. defective work not remedied; or

e. Items entitling Owner to retain set-offs from the amount recommended, including but not limited to:

1) Owner compensation to Project Administrator, Commissioning Authority, and/or Design Professional at an estimated rate ranging from \$120.00 to \$200.00 per each extra personnel hour for labor plus expenses because of the following Contractor-caused events:

(a) Delays necessitating a time extension for the performance of Project Administrator's and/or Design Professional's services;

(b) Witnessing retesting of corrected or replaced defective Work;

(c) Return visits to manufacturing facilities to witness factory testing or retesting;

(d) Submittal reviews in excess of two (one original submittal and one resubmissions) reviews by Project Administrator and/or Design Professional for substantially the same Submittal;

(e) Evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby;

(f) Hours worked by Contractor, in excess of normal work hours as defined by Article 6.02 of the General Conditions, necessitating Project Administrator and/or Design Professional to work overtime.

(g) Return visits to the Project for Design Professionals for Commissioning Activities not performed on the initial visit.

(h) Fines levied against the Owner for Contractor's performance of NPDES Erosion and Sedimentation Control Measures or other permit violations.

(i) The repair, rebuilding or restoration of property improvements or facilities by the Owner as outlined in Paragraph 6.13.

2) Liability for liquidated damages incurred by Contractor as set forth in the Agreement.

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Project Administrator, Owner will give Contractor immediate written notice (with a copy to Project Administrator) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

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

B. No materials or supplies for the Work shall be purchased by Contractor or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. Contractor warrants that Contractor has good title to all materials and supplies used by Contractor in the Work, free from all liens, claims or encumbrances.

C. Contractor shall indemnify and save Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. Contractor shall at Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If Contractor fails to do so, then Owner may, after having served written notice on the said Contractor either pay unpaid bills, of which Owner has written notice, direct, or withhold from Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to either Contractor or Contractor's Surety. In paying any unpaid bills of Contractor, Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as payment made under the Contract by Owner to Contractor and Owner shall not be liable to Contractor for any such payment made in good faith.

14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Project Administrator in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Design Professional and/or Project Administrator issue a certificate of Substantial Completion. On Projects when a Certification of Occupancy is required for the Owner to occupy or use a building or portion of a building, then the Contractor shall obtain a Certificate of Occupancy from the Building Inspections Department and include such Certificate of Occupancy with the notification that Contractor considers the work is substantially complete.

B. Promptly after Contractor's notification; Owner, Contractor, Project Administrator and/or Design Professional shall make an inspection of the Work to determine the status of completion. If Project Administrator does not consider the Work substantially complete, Project Administrator will notify Contractor in writing giving the reasons therefor.

C. Items of work to be completed by the Contractor prior to the Project Administrator's issuance of a Certificate of Substantial Completion include, but are not limited to, the following:

1. Certification from the Design Professional that Project is substantially complete.
2. Correction of all deficient or rejected Work items listed by the Design Professional, Project Administrator, testing agency, state, local, and other regulatory agencies or departments.
3. All Submittals must be received and approved by the Project Administrator, including, but not necessarily limited to, the following:
 - a. Record documents.
 - b. Factory test reports, where required.
 - c. Equipment and structure test reports.

- d. Manufacturer's Certificate of Proper Installation.
 - e. Operating and maintenance information, instructions, manuals, documents, drawings, diagrams, and records.
 - f. Spare parts lists and/or a listing of all attic stock items to be turned over to the Owner.
4. All additional warranty or insurance coverage requirements have been provided.
 5. All of required Owner's training has been completed and documented.
 6. All LEED™ documentation necessary to obtain LEED™ Certification has been uploaded to the LEED on-line website and electronic copies of each turned over to the Owner.

C. If Project Administrator considers the Work substantially complete, Project Administrator will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Project Administrator as to any provisions of the certificate or attached list. If, after considering such objections, Project Administrator concludes that the Work is not substantially complete, Project Administrator will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Project Administrator considers the Work substantially complete, Project Administrator will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Project Administrator believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Project Administrator 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, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Project Administrator in writing prior to Project Administrator's issuing the definitive certificate of Substantial Completion, Project Administrator's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Project Administrator, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Project Administrator that such part of the Work is substantially complete and request Project Administrator to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Project Administrator in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Project Administrator to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, Design Professional, Commissioning Authority, and Project Administrator shall make an inspection of that part of the Work to determine

its status of completion. If Project Administrator does not consider that part of the Work to be substantially complete, Project Administrator will notify Owner and Contractor in writing giving the reasons therefor. If Project Administrator considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Project Administrator, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments. Under no circumstances will Contractor's application for final payment be accepted by the Project Administrator until all Work required by the Contract Documents has been completed

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner 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.

B. Project Administrator's Review of Application and Acceptance

1. If on the basis of Project Administrator's observation of the Work during construction and final inspection, and Project Administrator's review of the final Application for Payment and accompanying documentation – all as required by the Contract Documents, Project Administrator is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Project Administrator will indicate in writing Project Administrator's recommendation of payment and present the Application to Owner for payment. Thereupon Project Administrator will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Project Administrator will return the Application to Contractor, indicating in writing the reasons for refusing to recommend

final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, Owner shall in accordance with the applicable State or local General Law, pay Contractor the amount recommended by Project Administrator.

C. Payment Becomes Due

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

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Project Administrator so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Project Administrator, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Project Administrator with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

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

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Project Administrator and/or Design Professional;

4. Contractor's violation in any substantial way of any provisions of the Contract Documents, including material or significant items of defective work not remedied;

5. If Contractor abandons the Work, or sublets this Contract or any part thereof, without the previous written consent of Owner, or if the Contract or any claim thereunder shall be assigned by Contractor otherwise than as herein specified;

6. Contractor is adjudged bankrupt or insolvent;

7. Contractor makes a general assignment for the benefit of creditors;

8. A trustee or receiver is appointed for Contractor or for any of Contractor's property;

9. Contractor files a petition to take advantage of any debtor's relief act, or to reorganize under the bankruptcy or applicable laws;

10. Contractor repeatedly fails to supply sufficient skilled workmen, materials or equipment;

11. Contractor fails to make satisfactory progress toward timely completion of the Work;

12. Contractor repeatedly fails to make prompt payments to Subcontractors or Material Suppliers for labor, materials or equipment.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor seven days written notice of its intent to terminate the services of Contractor, unless Contractor otherwise cures the deficiency in accordance with 15.02.D:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner on demand. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond, if any, shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

G. Any termination by Owner pursuant to this Paragraph 15.02 may result in the disqualification of Contractor for bidding on future contracts of Owner.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Project Administrator, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. direct expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all reasonable costs including ten percent overhead and profit for work thereafter performed as specified in such notice; reasonable administrative costs of settling and paying such claims arising out of termination of work under purchase orders or subcontracts; and
 4. reasonable expenses directly attributable to termination.
5. Contractor shall submit within 30 calendar days after receipt of notice of termination a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. Owner shall review, analyze, verify such proposal, and negotiate an equitable amount and the Contract may be modified accordingly.

B. The costs and expenses set forth in Paragraph 15.03.A shall be Contractor's sole and exclusive remedy in the event Owner, without cause, terminates the Contract. In such event, Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damage arising out of or resulting from such termination.

C. Any termination by Owner pursuant to Paragraph 15.02 which is later determined to be erroneous, unjustified, improper or wrongful in any way or for any reason shall be converted to a termination for convenience under this Paragraph 15.03 under which Contractor may recover, as its sole and exclusive remedy, those costs and expense set forth in Paragraphs 15.03.A.1 and 15.03.A.2. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damage arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Project Administrator fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 45 days, past the due date, to pay Contractor any sum finally determined to be due, then Contractor may, upon thirty days written notice to Owner and Project Administrator, and provided Owner or Project Administrator do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03, which payment shall be Contractor's sole and exclusive remedy for such termination.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Project Administrator has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 45 days to pay Contractor any sum finally determined to be due, Contractor may, 30 days after written notice to Owner and Project Administrator, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times nor otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in these General Conditions. If no method and procedure has been set forth, and subject to the provisions of Paragraphs 9.09 and 10.05, Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute. Contractor shall carry on the Work and maintain the progress schedule during the pendency of any dispute, Claim or dispute resolution proceedings, unless otherwise agreed by Contractor and Owner in writing.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

B. All notices required of Contractor shall be performed in writing to the appropriate entity.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

A. Articles and paragraph headings are inserted for convenience only and do not constitute parts of these general conditions.

17.07 *Addresses*

A. Both the address given in the Bid Form upon which this agreement is founded, and Contractor's office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to Contractor shall be certified, mailed, or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the first-named place, in any post office box regularly maintained by the post office department, of any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon date of such delivery or mailing. The first-named address may be changed at any time by an instrument in writing, executed by Contractor, and delivered to and acknowledged by the Owner and Project Administrator. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon Contractor personally.

17.08 *Forms and Record*

A. The form of all Submittals, notices, change orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the Project Administrator.

B. Contractor shall maintain throughout the term of the Contract, and retain for not less than four years after completion thereof, complete and accurate records of all Contractor's costs which relate to the work performed, including the extra work, under the terms of the Contract. The Owner, or its authorized representative, shall have the right at any reasonable time to examine and audit the original records.

C. Records to be maintained and retained by Contractor shall include, but not be limited to:

1. Payroll records accounting for total time distribution of Contractor's employees working full or part time on the Work;

2. Cancelled payroll checks or signed receipts for payroll payments in cash;

3. Invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items;

4. Paid invoices and cancelled checks for materials purchase, subcontractors, and any other third parties' charges;

5. Original estimate and change order estimate files and detailed worksheets;

6. All project-related correspondence; and

7. Subcontractor and supplier change order files (including detailed documentation covering negotiated settlements).

D. Owner shall also have the right to audit: any other supporting evidence necessary to substantiate charges related to this agreement (both direct and indirect costs, including overhead allocations as they may apply to costs associated with this agreement); and any records necessary to permit evaluation and verification of Contractor compliance with contract requirements and compliance with provisions for pricing change orders, payments, or claims submitted by Contractor or any payees thereof. Contractor shall also be required to include the right to audit provision in the contracts (including those of a lump-sum nature) of all subcontractors, insurance agents, or any other business entity providing goods and services.

17.09 *Assignment*

A. Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the Owner. In case Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to Contractor shall be

subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for under this Contract.

17.10 *Authority of the Design Professional and Project Administrator*

A. The Project Administrator will act as the Owner's representative during the construction period.

B. The Project Administrator and/or Design Professional may perform, individually or jointly, the following services on behalf of Owner, or any other duty or service set forth on the Contract Documents to be performed by Owner, Project Administrator and/or Design Professional:

1. Performing technical reviews of shop drawings, product data and samples;
2. Interpreting the intent of the Contract Documents, when in the opinion of the Project Administrator, the intent is not apparent;
3. Reviewing proposed change orders, when such changes may affect the intent of the original design;
4. Responding to Contractor's Requests For Information;
5. Reviewing changes to the Project;
6. Performing a final pre-start-up inspection;
7. Observing the final testing and start-up of the Project;
8. Determining that the Project is ready for final acceptance;
9. Performing technical reviews of operation and maintenance manuals;
10. Attending Progress Meetings, periodic site visits, input on quality and acceptability of products furnished and Work performed; and,
11. Design Professional will be authorized to observe all Work done and all products provided, including preparation, fabrication and manufacture of the products to be used, but will not be authorized to alter or waive any requirements of the Contract Documents. Design Professional may recommend to the Project Administrator to reject products, or suspend the Work.

C. Project Administrator will provide the provide the Design Professional with the following:

1. Minutes of all meetings between the Project Administrator and Contractor;
2. Copies of all updated schedules, as prepared by Contractor; and,
3. Copies of all Project Administrator's responses to Requests for Information.

D. All communication between the Design Professional and Contractor shall go through the Project Administrator. There shall be no duties or responsibilities between Contractor and Design Professional.

E. Project Administrator shall decide all conflicts between any parties on the Project when the conflicts are based on opinion or interpretation of the Contract Documents.

END OF SECTION

1.01 General

- A. The following general requirements apply to any and all Work under this Contract. Compliance is required by all Contractors and Sub-contractors of any tier. The Owner reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Contract.
- B. Evidence of Insurance Required Before Work Begins: No Contractor or Subcontractor shall commence any work of any kind under this Contract until all Insurance requirements contained in this Contract shall have been complied with as outlined below, and until evidence of such compliance satisfactory to the Owner as to form and content, has been filed with the Owner. The Accord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.
- C. Minimum Financial Security Requirements
1. Any and all companies providing insurance required by this Contract must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance Form. For all Contracts, regardless of size, companies providing insurance under this Contract must have a current:
 - a. Best's Rating not less than A, and current; and
 - b. Best's Financial Size Category not less than Class VII.
 - c. Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.
 2. If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the Owner, written notification shall be mailed by the Owner to the Contractor who shall promptly obtain a new policy issued by an insurer acceptable to the Owner, and shall submit evidence of the same to the Owner as required herein.
 3. Upon failure of the Contractor to furnish, deliver and maintain such insurance as herein provided, this Contract, at the election of the Owner, may be declared forthwith suspended, discontinued or terminated. Failure of the Contractor to take out and/or to maintain any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall these requirements be construed to conflict with the obligation of the Contractor concerning indemnification.
- D. Insurance Required for Duration of Contract: Any and all Insurance required by this Contract shall be maintained during the entire length of this Contract, including any extensions thereto, and until all Work has been completed to the satisfaction of the Owner. The Owner shall have the right to inquire into the adequacy of the insurance

coverages set forth in this Contract and to negotiate such adjustments as reasonably appear necessary.

- E. The Contractor shall submit to the Owner, along with the Insurance Certificate(s), a copy of the Insurer's cancellation notice for any and all Insurance policies required by the Contract.
- F. Additional Insureds: The Owner, Engineer, and Design Professional shall be covered as Additional Insured under any and all Insurance required by this Contract, and such insurance shall be primary with respect to the Additional Named Insured. Confirmation of this shall appear on the Accord Certificate of Insurance, and on any and all applicable Insurance policies. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Copies of endorsements showing that the Owner and each additional insured identified herein have been added to the policies as an additional insured shall be attached to each of the certificates. Include the following parties or entities as additional insured:
 - 1. The Unified Government of Athens-Clarke County, 301 College Avenue, Athens, Georgia 30601.
 - 2. Jacobs Project Management Company (JPM Co.) (C/O SPLOST Program Management, 301 College Avenue, Athens, Georgia 30601.)
 - 3. Design Professional as named in the Agreement.
- G. Mandatory Subcontractor Compliance: Contractor shall incorporate a copy of these Insurance requirements in each and every contract with each and every Subcontractor of any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain Insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
- H. Authorization and Licensing of Agent
 - 1. Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this Contract shall warrant, when signing the Accord Certificate of Insurance, that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage; that the coverage required by the Owner may be broader than the original policies; and that these requirements have been conveyed to the Companies, which acknowledge and assent to these terms and conditions.
 - 2. In addition, each and every agent shall warrant when signing the Accord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

1.02 Evidence of Coverage

- A. Contractor shall deliver to Owner at the time of execution of the Agreement, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Copies of endorsements showing that the Owner and each additional insured identified herein have been added to the policies as an additional insured shall be attached to each of the certificates.
- C. Insurance certificate must specifically show coverage applies for contractual liability for Contractor's indemnity obligations under Paragraphs 6.07, 6.11 and 6.20 of the General Conditions.
- D. In addition to the requirement for the policy limits specified below, the applicable insurance certificate must show that the entire aggregate policy limits for general liability coverage will apply specifically for the Project.
- E. Each insurance certificate for all coverages other than Worker's Compensation Insurance must show that a waiver of rights of recovery against any of the insured or the additional insured is in effect.
- F. Certificate for Contractor's liability insurance must show coverage of claims for damages because of bodily injury, sickness or death of any person or property damage resulting from the Ownership, maintenance or use of mobile equipment.
- G. Each insurance certificate must show coverage is underwritten with an insurance carrier who is rated no less than the Minimum Financial Security Requirements provided above.
- H. Certificate for Worker's Compensation Insurance must show coverage includes executive officers and Contractor's leased employees, temporary staff and part-time employees.
- I. Owner may waive specific insurance coverages set forth in Paragraph 5.04 where Contractor provides equivalent insurance coverage by way of a different combination of policies.

1.03 Coverages and Limits

- A. The Contractor shall provide all coverages listed below.
- B. Workers' Compensation and Employer's Liability Insurance: The Contractor shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under the Contract:

Workers' Compensation. . . . Statutory

Employer's Liability

Bodily Injury by Accident/Disease - \$1,000,000 each accident
 Bodily Injury by Accident/Disease - \$1,000,000 each employee
 Bodily Injury by Accident/Disease - \$1,000,000 policy limit

- C. Commercial General Liability Insurance: The Contractor shall procure and shall maintain during the life of the Contract Agreement, such Comprehensive General Liability and Broad Form Property Damage Insurance as shall protect Contractor and any subcontractor performing Work covered by this Contract from claims for damages for bodily injury, including accidental death, as well as from claims for property damages, which may arise from operations under the Contract Agreement, whether such operations are by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them. The amount of insurance shall not be less than the following:

General Aggregate for each annual period	\$2,000,000.00
Products Comp/Ops Aggregate for each annual period*	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Each Occurrence	\$1,000,000.00
Fire Damage (Any one fire)	\$ 50,000.00
Medical Expenses (Any one person)	\$ 10,000.00

**Completed Operations coverage extending for not less than three years after the completion of Work and Acceptance by the Owner.*

The insurance shall include coverage of the following hazards:

Underground
 Explosion/Collapse

NOTE: For the purpose of insurance coverage, each detonation of blasting is a single occurrence.

Contractor may provide General Liability, Automobile Liability, and Employer's Liability with lower limits provided that the Umbrella/Excess Liability Insurance Limits are increased such that the total of the basic limits and umbrella/excess limits remain the same or higher.

- D. Owner's Protective Liability: The Contractor shall procure and shall maintain during the life of the Contract Agreement, Owner's Protective Liability Insurance with the same limits as the Comprehensive General Liability.
- E. Excess Liability: Provide Excess Liability or Umbrella insurance providing protection for at least the hazards insured under the primary liability policies with the following limits:

General Aggregate	\$5,000,000.00
Each Occurrence	\$2,000,000.00

- F. Automobile Liability: The Contractor shall procure and maintain during the life of the Contract Agreement, Comprehensive Automobile Liability Insurance. The insurance shall include coverage for owned, non-owned and hired vehicles. Amounts shall not be less than the following:

Comprehensive Single Limits (CSL)	\$1,000,000.00
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- G. Not Used.
- H. Property Insurance: The Contractor shall obtain "All Risk" Property Insurance for the Contractor's tools, personal property, or equipment (including rail or conveyor systems, ventilation systems, office trailers, and other equipment that will not become part of the final completed work and is not covered in another insurance policy required for this project) whether owned, rented, or leased.
- I. Not Used.
- J. Deductibles and Self-Insured Retention: Any deductibles or self-insured retentions will be borne by the Contractor. All deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses. The costs of implementation of such option will be addressed by a change order.
- K. The Contractor is responsible for losses within the deductible limits.

END OF SECTION