



**INVITATION TO BID  
ITB# 17-276-G  
FOR**

**MILLBROOK CIRCLE WATER MAIN REPLACEMENT  
Schedule of Events**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
ITB Issue Date .....	10/3/2017
Pre-bid Conference not mandatory, attendance highly encouraged .....	10/12/2017, 3:00 PM
Deadline for Receipt of Written Questions .....	10/16/2017
Deadline for Posting of Written Answers to City's Website .....	10/18/2017
ITB Response Due Date .....	11/2/2017, 2:00 PM
ITB Opening .....	11/2/2017, 2:30 PM
Anticipated Award Date .....	11/27/2017

*(All time references in this document are understood as Local, Eastern Time for, Roswell, GA.)*

Questions should be directed in writing via e-mail to:

[purchasing@roswellgov.com](mailto:purchasing@roswellgov.com)

**Submit Proposals to:  
City of Roswell  
Purchasing Division  
38 Hill Street, Suite 130  
Roswell, Georgia 30075**

SECTION 00020  
ADVERTISEMENT FOR BIDS

The City of Roswell is accepting sealed bids from qualified contractors for the Millbrook Circle Water Main Replacement Project (BID #17-276-G). Sealed bids will be received no later than **2:00 PM, THURSDAY, November 2, 2017** at the City of Roswell Purchasing Division, Roswell City Hall, 38 Hill Street, Suite 130, Roswell, Georgia 30075, Bid Opening will follow, on the date bids are received, at 2:30 PM, at which time they will be opened and publicly read aloud. Bids received after the above date and time, or in any location other than the Purchasing Division, will not be considered.

There will be a pre-bid conference **THURSDAY, OCTOBER 12, 2017 at 3:00 PM** to be held at Roswell City Hall, 38 Hill Street, Room 220, Roswell, GA, 30075. Attendance is not required, but recommended.

**Project Scope:**

The scope of work consists of installing approximately 525 linear feet of 8-inch ductile iron pipe and approximately 700 linear feet of 2-inch Municipex polyethylene pipe along Millbrook Circle and around the existing neighborhood. The new water line will be tied into an existing 12-inch ductile iron water line on the north side of Norcross Street.

Electronic bid documents and plans may be obtained at no cost from the City of Roswell's website at <http://www.roswellgov.com/bids>. All questions must be submitted in writing to [purchasing@roswellgov.com](mailto:purchasing@roswellgov.com). Additional information may be obtained by contacting City of Roswell Purchasing Department at 770-641-3718. Please refer to bid name and number when requesting information.

This contract is Federal Community Development Block Grant (CDBG) funded. This is a Section 3 Covered Project under the Housing and Urban Development (HUD) Act of 1968 and Section 3 Residents and Business Concerns are encouraged to apply. Section 3 preferences and compliance will be discussed in detail at the pre-bid conference.

Each Bidder must deposit with their bid, a bid bond in the amount of 5-percent, and shall be subject to the conditions provided in Section 00100, Instructions to Bidders. Performance and Payment bonds in the amount of 100% of the contract price are also required.

No Bidder may withdraw his bid within one hundred and twenty (120) days after the date of Bid opening.

The City of Roswell reserves the right to reject any or all bids and to waive technicalities and informalities.

Michael Fischer  
Interim City Administrator

Jere Wood  
Mayor

\*\* END OF SECTION \*\*

SECTION 00100  
INSTRUCTIONS TO BIDDERS

1.1 DEFINED TERMS

- A. Terms used in these Instructions to Bidders which are defined in the General Conditions of the Contract for construction (Section 00700) have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a Bid to the bidder. The term "Successful Bidder" means the lowest responsible and responsive Bidder to whom the Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement for Bids, Instructions to Bidders, the Bid Form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids.)

1.2 COPIES OF BIDDING DOCUMENTS

- A. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents, by Bidders and their sub-bidders.
- B. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

1.3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. It is the responsibility of each Bidder, before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may in any manner affect cost, progress, performance or furnishing of the work, (c) consider federal, state and local laws, ordinance, rules and regulations that may in any manner affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors or discrepancies in the Contract Documents.
- B. Reference is made to the Supplementary Conditions for identification of:
1. Those reports of explorations and tests of subsurface conditions at the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the accuracy of the technical data contained in such reports but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for the purposes of bidding or construction.
  2. Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the accuracy of the technical data contained in such drawings but not upon the completeness thereof for the purposes of bidding or construction.
- C. Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which Bidder is entitled to rely as provided in Paragraphs 1.3.B.1 and 1.3.B.2 are incorporated therein by reference.
- D. Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.
- E. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in the General Conditions.

- F. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and Studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- G. On request in advance, Owner will provide each Bidder access to the site to conduct such exploration and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.
- H. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.
- I. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of these instructions, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance and furnishing of the Work.

#### 1.4 INTERPRETATIONS AND ADDENDA

- A. All questions about the meaning or intent of the Contract Documents are to be directed to Owner, in writing, and submitted to [purchasing@roswellgov.com](mailto:purchasing@roswellgov.com). Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda and posted by Owner to the Georgia Procurement Registry website, [http://ssl.doas.state.ga.us/PRSapp/PR\\_index.jsp](http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp) and the City of Roswell website, [www.roswellgov.com/bids](http://www.roswellgov.com/bids). Questions received after Monday October 16, 2017 may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications are without legal effect.
- B. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner.

#### 1.5 BID SECURITY

- A. Each Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of the Bidder's maximum Bid price and in the form of a Bid Bond issued by a surety satisfactory to the Owner.
- B. As soon as the Bid Prices have been compared, the Owner will return the Bid securities of all Bidders except the three (3) lowest responsive, responsible Bidders for each contract.
- C. After execution of the Agreement, the Bid Security of the Successful Bidder will be retained, and the securities of the two unsuccessful Bidders will be returned, until such Bidder has executed the Agreement and furnished the required insurance and bonds, whereupon the Bid Security will be returned. If the Successful bidder fails to execute and deliver the Agreement and furnish the required Insurance and Bonds within fifteen days of the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the 121st day after the Bid opening whereupon Bid Security of other bidders will be returned approximately 7 days after the Bid opening.
- D. The Bid Bond shall be issued by a company having a registered agent in the State of Georgia.

1.6 CONTRACT TIME

- A. The number of consecutive calendar days within which the Work is to be completed (the Contract Time) is set forth in the form of Agreement (Section 00500).

1.7 SUBSTITUTE MATERIAL AND EQUIPMENT

- A. The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" items of material or equipment may be furnished or used by Contractor if acceptable to Owner, application for such acceptance will not be considered by Owner until after the "effective date of the Agreement." The procedure for submittal of any such application and consideration by Contractor is set forth in General Conditions Section 6.05.

1.8 SUBCONTRACTORS

- A. Each Bid must identify the names and addresses of the Subcontractors. If requested by the Owner, the Successful Bidder, and any other Bidder so requested, shall within seven days after the date of the request, submit to Owner an experience statement with pertinent information as to similar projects and other evidence of qualification for each such Subcontractor, person and organization. If Owner after due investigation has reasonable objection to any proposed Subcontractor, supplier, other person or organization Owner may, before giving the Notice of Award, request the Successful Bidder to submit an acceptable substitute without an increase in Contract Price or Contract Time. If apparent Successful Bidder declines to make any substitutions, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement.
- B. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom he/she has reasonable objection.

1.9 BID FORM

- A. The Bid Form is included with the Bidding Documents; additional copies may be obtained from Owner.
- B. Bid Forms shall be completed in ink or by typewriter. All blanks on the Bid Form must be completed.
- C. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature. If requested, the person signing a Bid for a corporation or partnership must produce evidence satisfactory to the Owner of the person's authority to bind the corporation or partnership.
- D. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- E. All names must be typed or printed below the signature.
- F. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).
- G. The address and telephone number for communications regarding the Bid must be shown.

#### 1.10 SUBMISSION OF BIDS

- A. Two (2) sets of Bidding Documents shall be submitted at or before the time and at the place indicated in the Advertisement for Bids and shall be submitted in an opaque sealed envelope. The envelope shall be marked on the exterior "BID FOR CITY OF ROSWELL, MILLBROOK CIRCLE WATER MAIN REPLACEMENT PROJECT (BID #17-276-G)", with the name and address of the Bidder and accompanied by the Bidder's license number, if applicable, the name of the project for which the Bid is submitted, the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "SEALED BID ENVELOPE ENCLOSED" on the face thereof and addressed to City of Roswell, 38 Hill Street, Suite 130, Roswell, Georgia, 30075.
- B. More than one Bid received for the same work from an individual, firm or partnership, a Corporation or Association under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one bid for the same work will cause the rejection of all such Bids in which the Bidder is interested. If there are reasonable grounds for believing that collusion exists among the Bidders, the Bids of participants in such collusion will not be considered.
- C. **All Bidders must include a completed (as well as signed and notarized) Section 3 Business Concern, Previous Certificate of Compliance and Action Plan with their bid proposal. Any bid proposal that is received without the completed forms both signed and notarized will be considered non-responsive and the response rejected.**

**In reviewing the bid proposals, any Bidders that are identified as qualified Section 3 Business Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.**

#### 1.11 MODIFICATION AND WITHDRAWAL OF BIDS

- A. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the deadline for submitting Bids. A request for withdrawal or a modification must be in writing and signed by a person duly authorized to do so; and, in case signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modifications. Withdrawal of a Bid will not prejudice the rights of a Bidder to submit a new bid prior to the Bid Date and Time. After expiration of the period for receiving Bids, no Bid may be withdrawn or modified.
- B. Bids will be opened later by the Owner for evaluation.

#### 1.12 BIDS TO REMAIN OPEN

- A. All Bids shall remain open for 120 calendar days after the day of the Bid opening, but Owner may, at its sole discretion, release any Bid and return the Bid Security prior to that date.
- B. Extensions of time when Bids shall remain open beyond the 120 day period may be made only by mutual agreement between the Owner, the Successful Bidder, and the surety, if any, for the Successful Bidder.

#### 1.13 AWARD OF CONTRACT

- A. To the extent permitted by applicable state and federal laws and regulations, Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work with the Successful bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Bids may be considered irregular and subject to rejection if they show serious omission, unauthorized alteration of form, unauthorized alternate bids, incomplete or unbalanced unit prices, or irregularities of any kind. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes

that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner.

- B. Discrepancies between words and figures will be resolved in favor of words. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- C. In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- D. Owner may consider the qualifications and experience of Subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in Article 1.10 of the Instructions to Bidders.
- E. Owner may conduct such investigation as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- F. If the contract is to be awarded, it will be awarded to the lowest responsible, responsive Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interest of the Project.

#### 1.14 TAXES

- A. The Contractor shall pay all applicable sales, consumer, use and other similar taxes required by law.

#### 1.15 SIGNING OF AGREEMENT

- A. When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen calendar days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

#### 1.16 QUALIFICATIONS OF SURETY COMPANIES

- A. Article 7 of the Agreement sets forth the Owner's requirements as to Insurance and Bonds. When the successful bidder delivers the executed Agreement to the Owner, it must be accompanied by the required insurance and bonds issued by a surety acceptable to the Owner.

#### 1.17 REQUIRED DISCLOSURE

- A. With its bid submission, bidder shall disclose all material facts pertaining to any felony conviction or any pending felony charges in the last three (3) years in this State or any other State or the United States against (i) bidder, (ii) any business entity related to or affiliated with bidder, or (iii) any present or former executive employee, officer, director, stockholder, partner or owner of bidder or of any such related or affiliated entity. This disclosure shall not apply to any person or entity which is only a stockholder, which person or entity owns 20% or less of the outstanding shares of a bidder whose stock is publicly owned and traded.
- B. At its sole discretion the Owner may reject any bidder the Owner finds to lack, or whose present or former executive employees, officers, directors, stockholders, partners or owners are found by the Owner to lack honesty, integrity, or moral responsibility. The discretion of the Owner may be exercised based on the disclosure required herein. By

submitting a bid, bidder recognizes and accepts that the Owner may reject the bid based upon the exercise of its sole discretion and bidder waives any claim it might have for damages or other relief resulting from the rejection of its bid based on these grounds.

**\*\* END OF SECTION \*\***



SECTION 00400  
BID FORM

PROJECT IDENTIFICATION: MILLBROOK CIRCLE WATER MAIN REPLACEMENT  
PROJECT  
ROSWELL, GEORGIA  
BID NUMBER 17-276-G

CONTRACT INFORMATION AND NUMBER: City of Roswell PIN: 08120019

THIS BID IS SUBMITTED TO: City of Roswell  
38 Hill Street, Suite 130  
Roswell, Georgia 30075

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instruction to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain open for one hundred and twenty days after the day of bid opening. BIDDER will sign the Agreement and resubmit the Contract Security and other documents required by the Contract Documents within fifteen days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - a. BIDDER has examined copies of all Contract Documents and of the following addenda:

Date	Number

(receipt of all which is hereby acknowledged) and also copies of the Advertisement or Invitation to Bid and the Instructions to Bidders;

- b. BIDDER has examined the site and locality where the Work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the Work and has made such independent investigations as BIDDER deems necessary.
    - c. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit false or sham Bid; BIDDER has not solicited or

induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantages over any other Bidder or over OWNER.

4. BIDDER will complete the Work for the following price(s).

BID ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL ITEM COST
	Ductile Iron Pipe				
	8"	525	LF	\$	\$
	Ductile Iron Fittings	800	LBS	\$	\$
	Restrained Joint Gaskets				
	8"	26	EA	\$	\$
	Restrained Joint Glands				
	8"	10	EA	\$	\$
	Polyethylene Pipe/Fittings				
	2"	700	LF	\$	\$
	Steel Casing, Bore and Jack Installation				
	16"	60	LF	\$	\$
	PVC Casing, Bore and Jack Installation				
	4"	30	LF	\$	\$
	Uncased Bore				
	2"	80	LF	\$	\$
	8"	125	LF	\$	\$
	Tapping Sleeve and Valve				
	12"x8"	1	EA	\$	\$
	Tapping Saddle and Corporation Stop				
	8"x2"	3	EA	\$	\$
	Wet Tap	1	EA	\$	\$
	Gate Valve Assembly				
	2"	3	EA	\$	\$
	6"	1	EA	\$	\$
	Concrete Valve Marker	3	EA	\$	\$
	Abandon Existing Valve	3	EA	\$	\$
	Connect Existing Service – Short Side	22	EA	\$	\$
	Connect Existing Service – Long Side	6	EA	\$	\$
	Relocate Water Meter	3	EA	\$	\$
	New Water Meter	10	EA	\$	\$
	Fire Hydrant	1	EA	\$	\$
	Asphalt Mill and Resurface	2,250	SF	\$	\$
	Asphalt Patch	400	SF	\$	\$
	Concrete Thrust Block	4	CY	\$	\$
	Concrete Thrust Collar (Deadman)				
	8"	1	EA	\$	\$
	Curb and Gutter	50	LF	\$	\$
	Concrete Trench Cap	1,000	SF	\$	\$
	Erosion Control				
	Silt Fence (Sd1-C)	500	LF	\$	\$
	Gravel Bags (Sd2-P)	30	EA	\$	\$
	Matting (Mb)	1	LS	\$	\$
	Permanent Grass (Ds4)	1	LS	\$	\$

	Traffic Control	1	LS	\$	\$
	Rock Excavation Allowance	75	CY	\$	\$
	Contingency Allowance	1	LS	\$ 10,000.00	\$ 10,000.00

**TOTAL BID PRICE**

**\$** \_\_\_\_\_

Dollars

(Total Bid Price Written in Words)

5. The OWNER may elect to deduct from the Contract any or all of the items listed above in order for the total project cost to be within the funds available.
6. BIDDER agrees that, if awarded the Contract, the Work will be substantially completed within **90 calendar days** after the date when the Contract Time commences to run, and completed within **120 calendar days** after the date when the Contract Time commences to run.
7. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.
8. The following documents are attached to this Bid Form and are made a condition of this Bid:

**Bid Bond**  
**Non-collusion Affidavit of Bidder**  
**Corporate Certificate**  
**Contractor's License Certification**  
**Affidavit of Status**  
**Security and Immigration Certification**  
**Contractor Affidavit and Agreement**  
**Subcontractor Affidavit and Agreement (if applicable)**  
**Mandatory Section 3 Solicitation Package Forms**

The required bid security in the form of bid bond must be included and attached to the Bid Bond form.

9. The undersigned declares he understands that the quantities shown are approximate only and are subject to either increase or decrease and that should the quantities of any of the items of work be increased, that the undersigned proposes to do the additional work at the unit prices set forth herein, and should the quantities be decreased, he also understands that payment will be made on actual quantities installed at the unit bid price, and the undersigned will make no claims for anticipated profits for any decrease in the quantities. Actual quantities will be determined upon completion of the job.
10. Communications concerning this Bid shall be addressed to:  
  
Greg Anderson  
Email: [purchasing@roswellgov.com](mailto:purchasing@roswellgov.com)  
Subject: BID# 17-276-G
11. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

THIS BID SUBMITTED on \_\_\_\_\_, 20\_\_\_\_

BY

\_\_\_\_\_  
(company name)

\_\_\_\_\_  
(signature of person authorized to sign)

\_\_\_\_\_  
(printed name of person authorized to sign)

\_\_\_\_\_  
(title of authorized person)

\_\_\_\_\_  
(address)

CORPORATE SEAL

\_\_\_\_\_  
(city, state, zip code)

\_\_\_\_\_  
(telephone number)

\_\_\_\_\_  
(Georgia Utility Contractor License No.)

\*\* END OF SECTION \*\*

SECTION 00410  
BID BOND

**BIDDER (Name and Address):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SURETY (Name and Address of Principal Place of Business):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OWNER (Name and Address):**

City of Roswell  
38 Hill Street, Suite 130  
Roswell, GA 30075

**BID# 17-276-G**

BID DUE DATE: Thursday, November 2, 2017  
PROJECT (Brief Description Including Location):

Replace an existing 2-inch galvanized steel water line on Millbrook Circle with approximately 525 linear feet of 8-inch ductile iron pipe and approximately 900 linear feet of 2-inch Municipex polyethylene pipe. Project is located in Roswell, GA.

**BOND**

BOND NUMBER: \_\_\_\_\_

DATE (Not later than Bid due date): \_\_\_\_\_

PENAL SUM: \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_  
Dollars

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title  
(Attach Power of Attorney)

Attest: \_\_\_\_\_  
Signature and Title

Attest: \_\_\_\_\_  
Signature and Title

**Notes:**

1. Above addresses are to be used for giving required notice.
2. Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

- 1.01 Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder any difference between the total amount of Bidder's Bid and the total amount of the Bid of the next lowest, responsible and responsive Bidder as determined by OWNER for the Work required by the Contract Documents, provided that:
- A. If there is no such next lowest, responsible and responsive Bidder, and OWNER does not abandon the Project, then Bidder and Surety shall pay to OWNER the penal sum set forth on the face of this Bond, and
  - B. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
- 2.01 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.
- 3.01 This obligation shall be null and void if:
- A. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
  - B. All Bids are rejected by OWNER, or
  - C. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
- 4.01 Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
- 5.01 Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
- 6.01 No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
- 7.01 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
- 8.01 Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
- 9.01 Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

- 10.01 This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
- 11.01 The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

**\*\* END OF SECTION \*\***

SECTION 00420  
NON-COLLUSION AFFIDAVIT OF BIDDER

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He or she is \_\_\_\_\_ of  
*(Owner, Partner, Officer, Representative or Agent)*  
\_\_\_\_\_, the Bidder that has submitted the attached Bid;
2. He or she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Owner or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

(Signed) \_\_\_\_\_

(Title) \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public) *(signature)*

My Commission Expires: \_\_\_\_\_

(SEAL)

\*\* END OF SECTION \*\*



17-276-G SECTION 00430  
CORPORATE CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Bidder in the foregoing Bid; that \_\_\_\_\_, who signed said Bid on behalf of the Contractor was then \_\_\_\_\_ of said Corporation; that said Bid was duly signed for and on behalf of said Corporation by authority of its Board of Directors, and is within the scope of its corporate powers; that said Corporation is organized under the laws of the State of \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Corporate  
Secretary:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

(SEAL)

\*\* END OF SECTION \*\*

SECTION 00440  
CONTRACTOR'S LICENSE CERTIFICATION

Bidder/Contractor's Name: \_\_\_\_\_

Georgia Utility Contractor's License Number: \_\_\_\_\_

Expiration Date of License: \_\_\_\_\_

Georgia General Contractor's License Number: \_\_\_\_\_

Expiration Date of License: \_\_\_\_\_

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

BIDDER: \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*\* END OF SECTION \*\*

SECTION 00450  
AFFIDAVIT OF STATUS

**Affidavit Verifying Status  
For City of Roswell, Georgia  
Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Roswell, Georgia contract or other public benefit as referenced in O.C.G.A. § 50-36-1, I am stating the following with respect to my application for a City of Roswell, Georgia contract or other public benefit:

1. \_\_\_\_\_ I am a United States citizen

**OR**

2. \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 year of age or older and lawfully present in the United States\*.

In making the above presentation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Date: \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public) (signature)

My Commission Expires: \_\_\_\_\_

(SEAL)

\*Note: O.C.G.A. § 50-36-1 (e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of "alien", legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

**\*\* END OF SECTION \*\***

SECTION 00460  
SECURITY AND IMMIGRATION ACT COMPLIANCE CERTIFICATION

Pursuant to the Georgia Security and Immigration Compliance Act of 2006, Contractor understands and agrees that compliance with the requirements of O.C.G.A. 13-10-91 and Georgia Department of Labor Rule 300-10-1 et. seq. are conditions of Agreement. Contractor further agrees that such compliance shall be attested through execution of Contractor Affidavit and Agreement required by Georgia Department of Labor Rule 300-10-1-.07, or a substantially similar contractor affidavit. Contractor's fully executed affidavit is attached and is incorporated into this Agreement by reference herein.

By initialing in the appropriate line below, Contractor certifies that the following employee number category as identified in O.C.G.A. 13-10-91 is applicable to Contractor:

1. \_\_\_\_\_ 500 or more employees;
2. \_\_\_\_\_ 100 or more employees;
3. \_\_\_\_\_ Fewer than 100 employees.

Contractor understands and agrees that, in the event Contractor employs or contracts with Subcontractor in connection with this Agreement, Contractor shall:

1. Secure from each Subcontractor an indication of the employee-number category as identified in O.C.G.A. 13-10-91; and
2. Secure from each Subcontractor an attestation of Subcontractor's compliance with O.C.G.A. 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02 by causing each Subcontractor to execute the attached Subcontractor Affidavit required by Georgia Department of Labor Rule 300-10-1-.08, or a substantially similar subcontractor affidavit. Contractor further understands and agrees that Contractor shall require the executed Subcontractor Affidavit to become a part of the agreement between Contractor and each Subcontractor. Contractor agrees to maintain records of each Subcontractor attestation required hereunder for inspection by Owner.

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(signature)

My Commission Expires: \_\_\_\_\_

(SEAL)

\*\* END OF SECTION \*\*

SECTION 00470  
CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with the City of Roswell, Georgia has registered with and is participating in a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Roswell, Georgia, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and to provide a copy of each such verification to the City of Roswell, Georgia at the time the subcontractor(s) is retained to perform such service.

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

EEV/Basic Pilot Program User Identification Number: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

By: \_\_\_\_\_  
(signature of authorized agent)

\_\_\_\_\_  
(printed name of authorized agent)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public) (signature)

My Commission Expires: \_\_\_\_\_

(SEAL)

\*\* END OF SECTION \*\*

SECTION 00480  
SUBCONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with \_\_\_\_\_ (name of contractor), which has a contract with the City of Roswell, Georgia, has registered with and is participating in a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

EEV/Basic Pilot Program User Identification Number: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

By: \_\_\_\_\_  
(signature of authorized agent)

\_\_\_\_\_  
(printed name of authorized agent)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

(signature)

My Commission Expires: \_\_\_\_\_

(SEAL)

\*\* END OF SECTION \*\*

SECTION 00500  
CONSTRUCTION AGREEMENT

This agreement made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by and between \_\_\_\_\_,  
party of the first part, and the City of Roswell, party of the second part, 38 Hill Street, Roswell, GA, 30075.

Witnesseth: That the first party, for the consideration hereinafter fully set out, hereby agrees with the second Party:

1. That the first party shall perform all of the work in the manner and form to construct the complete work, as provided by the Contract Documents
2. That the first party shall commence the work to be performed under this agreement on a date to be specified in a written order or Notice to Proceed of the second party's engineer or designate, and shall reach Substantial Completion within 90 consecutive calendar days from said date, and shall reach Final Completion within 120 consecutive calendar days from said date, except as otherwise provided in the documents for extension of the above time limit.
3. The second Party hereby agrees to pay to the first party, for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States, the sum of (in words and figures)

\$ \_\_\_\_\_

Dollars

4. An amount equal to \$500.00 per calendar day shall be assessed the contractor, as liquidated damages for any failure to reach Substantial Completion on time. An amount equal to \$500.00 per calendar day shall be assessed the contractor, as liquidated damages for any failure to reach Final Completion on time. This assessment shall be in compliance with the terms stated under Article 1.14 of the General Conditions.
5. Within 15 calendar days of receipt, the City of Roswell shall, pursuant to the formal request of the contractor made within the first 7 days of any given month, make Partial payments to the contractor for that portion of the work completed as of the last day of the preceding month. The payment shall be based on the engineers/designate's duly certified estimate of the percentage of the total contract completions. Ten percent of each and every partial payment for the first fifty percent of work shall be retained by the City of Roswell to insure proper performance of this contract, and is to be paid to the contractor within 30 calendar days after Final Acceptance of all work, in connection with this contract.
6. Submission by the first party of evidence satisfactory to the second party that all payrolls, materials, bills, and other cost incurred by the first party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the first party of all work covered by this agreement and the acceptance of such work by the second party.
7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this agreement, and the surety bond hereto attached for its faithful performance, the second party shall deem the surety or sureties upon such bond to be unsatisfactory, or if for any reason, such bond ceases to be adequate to cover the performance of the work, the first party shall as its expense, within five (5) days after the receipt of notice from the second party to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the second party. In such event, no further payment to the first party shall be deemed to be due under this agreement until such new or additional security for the work shall be furnished in manner and form satisfactory to the second party.

8. The Contract Documents which compromise the entire agreement between Owner and Contractor concerning the work consist of the following:
- 8.1 This Agreement
  - 8.2 Performance Bond – Section 00610
  - 8.3 Payment Bond — Section 00620
  - 8.4 Notice of Award — Section 00490
  - 8.5 General Conditions — Section 00700
  - 8.6 Supplementary Conditions — Section 00800
  - 8.7 Summary of Work — Section 01010
  - 8.8 Specifications bearing the title "MILLBROOK CIRCLE WATER MAIN REPLACEMENT" and consisting of all divisions as listed in the Table of Contents thereof.
  - 8.9 Drawings whose cover bears the title "MILLBROOK CIRCLE WATER MAIN REPLACEMENT"
  - 8.10 Addenda Numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive.
  - 8.11 Contractors Bid Form – Section 00400
  - 8.12 Documentation acknowledged by CONTRACTOR prior to Notice of Award.
9. In witness whereof, the parties hereto have accepted this agreement under their respective seals on the day and date first above written is deemed the Original contract.

CONTRACTOR

OWNER

\_\_\_\_\_  
(Company Name)

City of Roswell  
Roswell, Georgia

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Seal)

(Seal)

Attest (as to Contractor)

Attest (as to Owner)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Note: If the contractor is a corporation, the 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 agreement shall be signed in the partnership name by one of the partners, with indication that he is a general partner.)

**\*\* END OF SECTION \*\***



SECTION 00610  
PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

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OWNER (Name and Address):

City of Roswell  
38 Hill Street, Suite 130  
Roswell, GA 30075

CONTRACT

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Dollars

Description (Name and Location):

Replace an existing 2-inch galvanized steel water line on Millbrook Circle with approximately 525 linear feet of 8-inch ductile iron pipe and approximately 900 linear feet of 2-inch Muncipex polyethylene pipe. Project is located in Roswell, GA.

BOND

Date (Not earlier than Contract Date):

Amount: \$ \_\_\_\_\_

Dollars

Modifications to this Bond Form:

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Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Seal)

(Seal)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Seal)

(Seal)

- 1.0 The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, and successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.
- 2.0 If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.0.A.
- 3.0 If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:
  - A. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10.0 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and
  - B. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.0.A; and
  - C. The OWNER has agreed to pay the Balance of the Contract Price to:
    1. The Surety in accordance with the terms of the Contract;
    2. Another contractor selected pursuant to paragraph 4.0.C to perform the Contract.
- 4.0 When the OWNER has satisfied the conditions of Section 3.0, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - A. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or
  - B. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - C. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or
  - D. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;
    1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefore to the OWNER; or
    2. Deny liability in whole or in part and notify the OWNER citing reasons therefore.
- 5.0 If the Surety does not proceed as provided in Section 4.0 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written

notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.0.D and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

- 6.0 After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.0.A, 4.0.B, or 4.0.C above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
- A. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;
  - B. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4.0; and
  - C. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.
- 7.0 The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.
- 8.0 The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
- 9.0 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent Jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 10.0 Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
- 11.0 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract will be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 12.0 Definitions
- A. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

- B. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
- C. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- D. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

\*\* END OF SECTION \*\*

SECTION 00620  
PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OWNER (Name and Address):

City of Roswell  
38 Hill Street, Suite 130  
Roswell, GA 30075

CONTRACT

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Dollars

Description (Name and Location):

Replace an existing 2-inch galvanized steel water line on Millbrook Circle with approximately 525 linear feet of 8-inch ductile iron pipe and approximately 900 linear feet of 2-inch Muncipex polyethylene pipe. Project is located in Roswell, GA.

BOND

Date (Not earlier than Contract Date):

Amount: \$ \_\_\_\_\_

Dollars

Modifications to this Bond Form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Seal)

(Seal)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(Seal)

(Seal)

- 1.0 The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, and successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.
- 2.0 With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:
  - A. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - B. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses provided) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.
- 3.0 With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.
- 4.0 The Surety shall have no obligation to Claimants under this Bond until:
  - A. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses provided) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - B. Claimants who do not have a direct contract with the CONTRACTOR:
    1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.
- 5.0 If a notice, required by Section 4.0, is given by the OWNER to the CONTRACTOR or to the Surety that is sufficient compliance.
- 6.0 When the Claimant has satisfied the conditions of Section 4.0, the Surety shall promptly and at the Surety's expense take the following actions:
  - A. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - B. Pay or arrange for payment of any undisputed amounts.



- 7.0 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 8.0 Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.
- 9.0 The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- 10.0 The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
- 11.0 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.0.A or paragraph 4.0.B.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12.0 Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- 13.0 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
- 14.0 Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.
- 15.0 Definitions
- A. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- B. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

- C. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**\*\* END OF SECTION \*\***

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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and

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**STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications. The General Requirements are applicable to all Sections of the Specifications and to the entire Work.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

- 25.1 *Liquidated Damages* – amounts shall be as stipulated in the Agreement. Liquidated Damages shall apply to the Contract Times for the Project. Liquidated damages shall be both additive and cumulative. Liquidated Damages shall end upon Substantial Completion, Completion of Work associated with each Milestone Date, and upon final completion of the Work.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et. seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, 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 Engineer in accordance with the requirements of the Specifications; and (iii) all required inspections and other work necessary for the Engineer 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. See General Conditions Paragraph 14.04 for additional provisions.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any

encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
  1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed,” “as required” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and the information in the Contract Documents and compliance with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

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

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

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

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

## **ARTICLE 2 – PRELIMINARY MATTERS**

### *2.01 Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds and Certifications of Insurance as Contractor may be required to furnish in accordance with Article 5.
- B. Contract, Performance Bond and Payment Bond shall not be dated prior to submittal to the Owner so that all three can be filled in by the Owner with the same date.
- C. Certified copy of Power of Attorney for Performance Bond and Payment Bond must be dated prior to submittal to the Owner with a date which is within the previous fifteen days.
- D. Performance Bond, Payment Bond and certified copy of Power of Attorney must have corporate seal of surety.
- E. Signature of attorney-in-fact for surety company on Performance Bond and Payment Bond must be one of persons authorized to sign on certified copy of Power of Attorney.
- F. The copy of Contract Documents to be kept by the Owner must have original signed certificate version of the certified Power of Attorney. Other copies may have copies of the certificate.
- G. If Contractor is a corporation, Contract, Performance Bond and Payment Bond must have corporate seal of Contractor affixed, must show title of person signing on behalf of Contractor and must be attested by Secretary or Assistant Secretary.
- H. The Payment Bond and the Performance Bond must be on Owner's forms, included herein.
- I. Surety company must be shown on the current Department of the Treasury Circular 570, Surety Companies Acceptable on Federal Bonds, with an underwriting limitation greater than the amount of the Contract.

## 2.02 *Copies of Documents*

- A. Owner will furnish to Contractor up to four printed or hard copies of the Contract Documents and one counterpart of the executed Contract Agreement. Additional copies will be furnished upon request at the cost of reproduction.
- B. Owner may also, if requested by Contractor, furnish contractor with electronic copies 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 the Contractor. The Owner and Engineer assume no liability and shall be held harmless for any discrepancies between the hard copy and electronic copy of the Contract Documents.
  - 1. To receive electronic copies of the Contract Documents, Contractor shall complete and provide to Engineer an Electronic Media Release Form.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The 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 60 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the one-hundred and twentieth day after the Owner receives copies of the Agreement properly executed by the Contractor and the Bonds, evidence of proper insurance and other materials required by the Notice of Award.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
- B. *Preliminary Schedules:* Within 10 days after the commencement of the Contract Time (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer 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 common monthly date); and
  - 3. a preliminary Schedule of Values for all of the Work in a format acceptable to the Engineer and in accordance with the requirements specified in the General Requirements.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.



- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.07 *Initial Acceptance of Schedules*

- A. Within 10 days after the preconstruction conference, a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer as being the Contractor's schedule for the orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals. The Schedule of Submittal 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 Engineer as to form and substance if it is provided in accordance with the requirements specified in the General Requirements.

#### 2.08 *Licensing*

- A. Before any work at the site is started which is governed by the Construction Industry Licensing Board of Georgia (O.C.G.A. Section 43-14-1 et. seq. and Section 43-41 et. seq.), or its rules or regulations, Contractor shall inform himself of those rules and regulations, and qualification for licensure, and if requested shall deliver proof of compliance to the Owner and Engineer.

### **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 reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.
- D. Where the word “similar” occurs in the Contract Documents, 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 amended to make such insertion.
- F. “Imperative” or “Command” type language is used in the Contract Documents. This command language refers to and is directed to the Contractor.
- G. 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 Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

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, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In resolving inconsistencies within the Contract Documents, precedence shall be given in the following descending order:
  - a. Change Orders.
  - b. Work Change Directives.
  - c. Field Orders.
  - d. Engineer's written interpretations and clarifications.
  - e. Notice to Proceed.

- f. Addenda.
  - g. Contract Agreement.
  - h. Supplementary Conditions.
  - i. General Conditions.
  - j. Specifications.
  - k. Drawings.
    - i. Figure dimensions on Drawings shall take precedence over scaled dimensions.
    - ii. Detailed drawings shall take precedence over general drawings.
    - iii. In case of discrepancy between small-scale and large-scale detail, the large-scale detail shall govern. On any of the Drawings where a portion of the Work is drawn out and the remainder is shown in outline, the portion drawn out shall apply also to all other like portions of the Work.
  - l. Bidding Requirements.
3. In cases where products or quantities are omitted from the Specifications, the description and quantities on the Drawings shall govern.

#### 3.04 *Amending and Supplementing Contract Documents*

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

#### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

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

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

### 4.01 *Availability of Lands*

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

- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- D. The 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 the Owner is unable to obtain lands as indicated in the Contract Documents, the 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.

#### 4.02 *Subsurface and Physical Conditions*

##### A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by the Engineer in preparing the Contract Documents; and
2. those drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been utilized by the Engineer in preparing the Contract Documents.

##### B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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.

*[See Supplementary Conditions SC-4.02]*

#### 4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or

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

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

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or

subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

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



- been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.
- C. The dimensions and descriptions given on the Drawings for adjacent work by others, if any, (including any existing facilities or utilities previously constructed by 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 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 Engineer. No additional 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 Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Engineer. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
- B. Engineer may check the lines, elevations, and reference marks 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.
- C. The Contractor shall review the Contract Documents and the Project site to determine the presence and location of any property or right-of-way monuments or markers, and to assess the possibility of disruption to these monuments or markers. It will be the Contractor's responsibility to flag, erect guard posts, or provide offset references for the protection of these property or right-of-way monuments or markers. In the event these monuments or markers are covered or disturbed, it will be the Contractor's responsibility to employ a surveyor licensed in the state of Georgia 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 Engineer 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 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 Engineer to incorporate these items into the Contract Documents.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- 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 such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by 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 provided below.
  - 1. Surety shall be in good standing with Georgi's Insurance Commissioner's Office.
  - 2. Surety and Insurers must have an A.M. Best Financial Strength Rating and a Financial Size Category as stated in the insurance requirements specified elsewhere in these Contract Documents.
  - 3. The surety shall have an underwriting limitation in Circular 570 in excess of the Contract Price.
- B. All Sureties and Insurers must have an A.M. Best Financial Strength Rating of A- or higher, with a Financial Size Category of X or higher.

### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain, if any.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- F. Notwithstanding provisions of O.C.G.A., Section 33-23-44, insurance certificate must include the following affirmative statement: "Coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner and to each other additional insured to whom a certificate of insurance has been issued."
- G. Insurance certificate must show proper name and address of Owner and show Owner, Engineer, and Engineer's Consultants as additional insureds.
- H. Insurance certificate must show coverage applies for contractual liability for Contractor's indemnity obligations under Paragraphs 6.07, 6.11 and 6.20 of the General Conditions.
- I. In addition to the requirement for the policy limits specified under S.C. 5.04.A.3-A.5, the applicable insurance certificate must show that the entire aggregate policy limits for general liability coverage will apply specifically for the Project.
- J. Each insurance certificate for coverage other than Worker's Compensation Insurance must show that a waiver of rights of recovery against any of the insureds or the additional insureds is in effect.
- K. 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.

- L. Certificate for Worker's Compensation Insurance must show coverage includes executive officers and Contractor's leased employees, temporary staff and part-time employees.
- M. Owner may waive specific insurance coverages set forth in SC-5.04 where contractor provides equivalent insurance coverage by way of a different combination of policies.
- N. Each insurance certificate must show coverage is underwritten with an insurance carrier which has A.M. Best ratings as stipulated in Paragraph 5.02.B.

5.04 *Contractor's Insurance [See Supplementary Conditions SC-5.04]*

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

- partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
  3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
  6. include completed operations coverage:
    - a. Such insurance shall remain in effect for two years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- C. The limits of liability for the insurance required by paragraph 5.04.B.2 of the General Conditions shall provide coverage specified in the Supplementary Conditions or greater where required by Law and Regulations.
- D. Any renewal of a policy shall have an original retroactive date no later than the date of the Contract.
- E. Additional Insureds: The Owner, Engineer, and Engineer's Consultant 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 Worker's 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.

## 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 upon the Work at the site in the amount of the full replacement cost thereof except for flood perils which shall have a \$1,000,000 limit (subject to such deductible amounts as may be provided in these Supplemental Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants and any other person or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
  2. be written on a Builder's Risk or Installation Floater "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure real and personal property against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, explosives and blasting, wind, flood, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects, permits, loss and damage to the Work, temporary building and scaffoldings, false work, work in transit, and materials and supplies, fixtures, machinery and equipment);
  4. cover materials and equipment in transit for incorporation in the Work or stored at the site or at any other location prior to being incorporated in the Work, provided that such materials and equipment have been recommended by Engineer; and be maintained in effect until final agreed to in writing by Owner, Contractor, and Engineer with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup;
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued; and



8. contain the following provisions: (1) coverage for property in transit and (2) coverage for building damage as required by ordinance and law including demolition, debris removal and increased cost of construction.
  9. Property insurance furnished under this contract shall have deductibles no greater than \$25,000 for all perils.
- B. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions or approved by Owner. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- C. The policies of insurance required to be purchased and maintained by Contractor in accordance this paragraph 5.06 shall comply with the requirements of GC 5.04.B.5.

#### 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, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. 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 loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

- B. Owner 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 as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner shall give bond for the proper performance of such duties.

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

- A. If Owner has any objection to the coverage afforded by or other provisions 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 10 days of the date of delivery of such certificate to Owner in accordance with Paragraph 2.01. Contractor shall 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 Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. 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 the authority to act on behalf of Contractor, including executing the orders or directions of the Engineer 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, Engineer 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. Engineer shall be notified in writing prior to any change in quality control representative assignment.
- E. Prior to the Commencement of the Contract Times, Contractor shall furnish to the Owner and Engineer 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 Engineer.

6.02 *Labor; Working Hours [See Supplementary Conditions SC-6.02]*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Contractor shall, upon demand from the Engineer, immediately remove any manager, superintendent, foreman or workman whom the Engineer 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 Engineer.
- C. Regular working hours may be Monday through Friday, excluding holidays, occurring between the hours of 7:00 AM and 7:00 PM, unless restricted otherwise. Contractor shall establish a 40-hour work week with regular scheduled work times, e.g., four 10-hour days or five 8-hour days, within the hours and days allowed above. Approval for specific work outside regular scheduled work times shall be requested no less than 48 hours prior to the requested work period. Contractor shall request approval of changes in regular scheduled work times no less than one week prior to the desired change. Occasional unscheduled overtime on weekdays may be permitted provided reasonable notice is given to Engineer.
- D. Contractor shall pay all extra costs incurred by the Owner associated with work, outside of regular 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 the amounts as provided in the Supplementary Conditions 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 50 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. The Engineer 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, quality control, 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 (material and equipment) provided on this Project shall be new and unused and provided by the Contractor unless specified otherwise, 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 agreement between Contractor and subcontractor or supplier supplying products provided on this Project. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the 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. The Contractor shall proceed with the Work at a rate of progress which will ensure completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and the Owner, that the Contract Times for the Work described herein are reasonable times, taking into consideration the average climatic and economic conditions, and other factors prevailing in the locality of the Work.

- B. 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 it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer 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. Number of anticipated days associated weather conditions, as defined in the Supplementary Conditions, shall be included on the critical path of Project Schedule.
- C. 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 the 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.
- D. Project Coordination Meetings: The Contractor shall participate in Project Coordination Meetings to be held on the site monthly, or more often if conditions warrant, to establish the current state of completion and revise the schedule as necessary. The Project Coordination Meeting will be conducted by the Owner and/or the Engineer.
- E. The Contractor shall implement the detailed schedule of activities to the fullest extent possible between Project Coordination Meetings.
- F. The Contractor shall prepare its daily report by 10:00 a.m. of the day following the report date. This daily report will contain, as a minimum, the weather conditions; number of workers by craft, including supervision and management personnel on site; active and inactive equipment on site; work accomplished by schedule activity item; problems; and visitors to the jobsite.
- G. If a current activity or series of activities on the overall project schedule is behind schedule and if the late status is not due to an excusable delay for which a time extension would be forthcoming, the Contractor shall attempt to reschedule the activity to be consistent with the overall Project Schedule so as not to delay any of the Contract milestones. The Contractor agrees that:

1. The Contractor shall attempt to expedite the activity completion so as to have it agree with the overall progress schedule. Such measures as the Contractor may choose shall be made explicit during the Project Coordination Meeting.
  2. If, within two weeks of identification of such behind-schedule activity, the Contractor is not successful in restoring the activity to an on schedule status, the Contractor shall:
    - a. Carry out the activity with the scheduled crew on an overtime basis until the activity is complete or back on schedule.
    - b. Increase crew size and add shifts so the activity can be completed as scheduled.
    - c. Commit to overtime or increased crew sizes for subsequent activities, or some combination of the above as deemed suitable by the Engineer.
  3. These actions shall be taken at no increase in the Contract Price.
- H. The Contractor shall maintain a current copy of all construction schedules on prominent display in the Contractor's field office at the Project site.
- I. The Contractor shall cooperate with the Owner and Engineer in all aspects of the Project scheduling system. Failure to implement the Project scheduling system or to provide specified schedules, diagrams and reports, or to implement actions to re-establish progress consistent with the overall progress schedule may be cause for withholding of payment.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

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

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract

with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

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

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

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

## 6.06 *Concerning Subcontractors, Suppliers, and Others*



- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. 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, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection. If more than twenty-five percent of the work (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 Section 11 of Instructions to Bidders.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

- G. All Work performed for Contractor by a Subcontractor or Supplier 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 Engineer.
- H. Owner or Engineer 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 as specialty work in Specifications and which, under normal contracting practices, is best performed by Specialty Subcontractors, as required by the Engineer in Engineer's sole discretion, at no additional cost to the Owner. If Contractor desires to self-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.
- J. The Contractor shall perform a minimum of 50 percent of the onsite labor with its own employees.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents

#### 6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in

obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.
- D. The Contractor shall keep fully informed of all laws, ordinances and regulations of the federal, state, county, city and municipal governments or authorities in any manner affecting those engaged or employed in the Work or the materials used in the Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same.
  - 1. Security and Immigration Act: Contractor and its Subcontractors shall register and comply with O.C.G.A. 13-10-90 et. seq. and Georgia Department of Labor Chapter 300-10-1.
- E. Contractor shall perform those duties as they relate to O.C.G.A. Section 36-91-92, including filing the Notice of Commencement. Contractor shall provide Owner and Engineer with proof of having performed these duties before any progress payments or final payment shall be considered due and payable to the Contractor.
- F. 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 and Engineer do not warrant that any entity listed as an acceptable manufacturer is or will be in compliance with such laws.

- G. Any fines levied against the Owner for failure of Contractor to properly maintain required NPDES erosion and sediment control measures or any other related requirements will be 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. The property, improvements or facilities at the Site shall be replaced or restored to a condition as good as when Contractor entered upon the Site. 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.
- H. Contractor's Plan for Safety Precautions and Programs
  1. Before any Work at the site is started, Contractor shall have prepared Contractor's written plan for Project-specific safety precautions and programs, complete with respect to procedures and actions that the Contractor intends Contractor and all others as provided in Paragraphs 6.13.A.1 and 13.02.A, to follow in order for Contractor and all others to comply with all applicable Laws and Regulations. Contractor's plan for safety precautions and programs shall have been approved and endorsed by Contractor's designated safety representative required in Paragraph 6.14.A.
  2. Contractor shall revise Contractor's plan for safety precautions and programs at appropriate times to reflect changes in construction conditions, the Work, Contractor's means, methods, techniques, sequences and procedures of construction, and the requirements of paragraph 13.02.A. Contractor shall disseminate the original plan and revisions to all others indicated in Paragraphs 6.13.A and 13.02.A.
  3. Contractor's plan for safety precautions and programs will not require more stringent safety requirements, training or other qualifications for all others, including those specified in Paragraph 13.02.A and their employees, than Contractor sets forth for comparable activity and responsibility of Contractor, Subcontractors, and Suppliers and their respective employees.

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

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

2. *Samples:*

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

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

C. *Submittal Procedures:*

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

D. *Engineer's Review:*

1. Engineer will return as incomplete or will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval or disapproval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval or disapproval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means,



method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

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

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

F. Excessive Submittal Resubmission: Engineer will record time required by Engineer for excessive submittal review occasioned by Contractor's resubmission, in excess of two resubmissions of any required submittal, caused by unverified, unchecked or unreviewed, incomplete, inaccurate or erroneous, or nonconforming submittals. Upon receipt of Engineer's accounting of time and costs, Contractor will reimburse Owner for the charges of Engineer's review for excessive resubmissions through set-offs from the recommended Owner payments to Contractor as established I Paragraph 14.02.D. of these General Conditions.

G. In the event that Contractor provided a submittal for a previously approved item, whether such is as a substitution or in addition to the previously approved item, Contractor shall reimburse Owner for Engineer'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. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

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

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity. 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 and/or Engineer on account of any damage alleged to have been sustained,

Owner shall notify Contractor, who shall indemnify and save harmless Owner and Engineer against any such claims.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the negligent preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. negligently giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- D. Contractor, Subcontractors, Suppliers and others on the Project, or their sureties, shall maintain no direct action against the Engineer, their officers, employees, affiliated corporations, consultants, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the Owner will be the beneficiary of any undertaking by the Engineer.

#### 6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### *7.01 Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit

and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 7.02 *Coordination*

- A. If Owner contracts with others for the performance of other work on the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination with other contractors.
- C. If Owner contracts with others for the performance of other work on the Site, the Contractor shall attend and participate in coordination meetings with the other on-site 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 liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

#### 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, Engineer, 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, Engineer, 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, Engineer, or the officers, directors, employees, agents, and 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 not institute any action, legal or equitable, against Owner, Engineer, or the officers, directors, employees, agents, and 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, Engineer, 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 hereto, 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, and/or Engineer 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. This Paragraph does not prevent recovery from Owner and Engineer for activities that are their respective responsibilities

## **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 Engineer.

### **8.02 *Replacement of Engineer***

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer whose status under the Contract Documents shall be that of the former Engineer.

### **8.03 *Furnish Data***

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

### **8.04 *Pay When Due***

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

### **8.05 *Lands and Easements; Reports and Tests***

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

8.12 *Compliance with Safety Program*

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

## **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative [See Supplementary Conditions SC-9.03]*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*



- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents, except that Owner shall determine whether bonds, certificates of insurance and release of liens comply with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly

proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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 Engineer 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 Engineer.
  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 Times (or Milestones).
  4. The Owner shall not be liable to the Contractor for any costs associated with the preparation of proposal associated with the 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.D.

#### 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

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

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:
  - a. the Cost of the Work covered by the Change Order,
  - b. Contractor's fee for overhead and profit,
  - c. interruption of Progress Schedules,
  - d. delay and impact, including cumulative impact, on other work under the Contract Documents, and
  - e. 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 the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### 10.05 *Claims and Disputes*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 14 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with written supporting data shall be delivered to the Engineer and the other party to the Contract within 21 days (and monthly thereafter for continuing events) after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

### *11.01 Cost of the Work*

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

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, 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 Engineer, 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 by 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 Engineer or accepted at reduced rates.
  3. Equipment in Use: Actual equipment use time documented by the Engineer 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 full hour, as recorded by the Engineer

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

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 Engineer, 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 shut down by the Owner, standby time will be paid during non-operating

hours if diversion of equipment to other Work is not practicable. Engineer reserves the right to cease standby time payment when an extended shutdown is anticipated.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to 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 of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee. 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, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.



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

#### 11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- 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 Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a lump sum value fixed by the Owner or by unit price values fixed by the Owner (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and where the methods under Paragraph 12.01.B.2. are not 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 on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor; 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 Times*

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

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

12.03 *Delays [See Supplementary Conditions SC-12.03]*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, quarantine restrictions, strikes, freight embargoes, acts of war (declared or not declared), or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **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 or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### *13.03 Tests and Inspections*

- A. Contractor 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 Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall establish an inspection program and a testing plan acceptable to the Engineer and shall maintain complete inspection and testing records available to Engineer.
- 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 Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer 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 and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase

thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- G. Tests required by Contract Documents to be performed by Contractor and that require test certificates to be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required testing laboratories or agencies shall meet the following applicable requirements:
  - 1. "Recommended Requirements for Independent Laboratory Qualification", published by the American Council of Independent Laboratories.
  - 2. Basic requirements of ASTM E329, "Standard of Recommended Practice for Inspection and Testing Agencies for Concrete and Steel as Used in Construction" as applicable.
  - 3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

#### 13.04 *Uncovering Work*

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

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- B. If Owner stops Work under Paragraph 13.05.A. Contractor shall not be entitled to an extension of Contract Times or increase in Contract Price.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- C. Contractor shall promptly segregate and remove rejected products from the Site.
- D. If rejected products or Work is not removed within 48 hours, the Engineer will have the right and authority to stop the Work immediately and will have the right to arrange for the removal of said rejected products or Work at the cost and expense of the Contractor.

#### 13.07 *Correction Period*

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

1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
- F. Repetitive malfunction of an equipment or product item shall be cause for replacement and an extension of the correction period to a date one year following acceptable replacement. A repetitive malfunction shall be defined as the third failure of an equipment or product item following original acceptance.

### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary



revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time as defined by the Engineer after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

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

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

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

*D. Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.
4. Items entitling Owner to retain set-offs from the amount recommended, include but are not limited to:
  - a. Owner compensation to Engineer because of the following Contractor-caused events:

- (1) Delays necessitating a time extension for the performance of Engineer's services;
  - (2) Witnessing retesting of corrected or replaced defective Work;
  - (3) Return visits to manufacturing facilities to witness factory testing or retesting;
  - (4) Submittal reviews in excess of three reviews by Engineer for substantially the same Submittal;
  - (5) Evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby;
  - (6) Hours worked by Contractor, in excess of normal work hours as defined by Article 6.02 of the General Conditions, necessitating Engineer to work overtime;
  - (7) Return visits to the Project by Engineer for Commissioning Activities not performed on the initial visit;
- b. Fines levied against the Owner for Contractor's performance of NPDES Erosion and Sedimentation Control Measures or other permit violations.
  - c. The cost of repair, rebuilding or restoration of property improvements or facilities by the Owner as outlined in Paragraph 6.13.
  - d. Liability for liquidated damages incurred by Contractor as set forth in the Agreement.

E. *Prompt Payment Clause*

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.
2. Interest Rate: For purposes of computing interest on late payments, the rate of interest shall be the applicable monthly interest rate for the "Georgia Fund 1" investment pool managed by the State of Georgia Office of Treasury and Fiscal Services.
3. Payment Periods:
  - a. 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.
  - b. 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.

4. 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 14.02.E.3b, 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 14.02.E.3b, 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 14.02.E.5. Acceptance or progress payments or final payment shall release all claims for interest on said payments.
5. 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:
  - a. A short and concise statement that interest is due pursuant to the provisions of the Georgia Prompt Pay Act and this Prompt Payment Clause;
  - b. The principal amount of the periodic or final payment which is allegedly due to the charging party; and
  - c. 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.
6. 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.
7. 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.

#### 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 for payment by 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 to 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 Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion. Specific items of Work that must be completed prior to the Engineer's issuance of a certificate of Substantial Completion include, but are not limited to, the following:
  - 1. Correction of all deficient Work items listed by all state, local, and other regulatory agencies or departments.

2. All submittals must be received and approved by the Engineer, 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.
  3. All additional warranty or insurance coverage requirements have been provided.
  4. All manufacturer/vendor-provided operator training is complete and documented.
  5. All occupancy permits required by local building code officials.
  6. Other items of Work specified elsewhere as being prerequisite for Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in



writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

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

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

*A. Application for Payment:*

1. After Contractor has, in the opinion of Engineer, 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 Engineer 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.6;
  - b. consent of the surety 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.
  - e. The Contractor's signed and sealed final change order to close the Contract; and
  - f. Any other data reasonably required by the Owner and/or Engineer, including execution of Affidavit of Contractor, establishing payment or satisfaction of all obligations, including releases, waivers of liens, and documents of satisfaction of debts.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying all documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for

payment. Thereupon Engineer will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment. If the Application for Payment and accompanying documentation are appropriate as to form and substance, Owner will in accordance with the applicable State or local General Law, pay Contractor the amount recommended by Engineer.

*C. Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

**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 Engineer

which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer;
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents;
  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; or
  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 (and surety) seven days written notice of its intent to terminate the services of Contractor, unless Contractor otherwise cures the deficiency in accordance with Paragraph 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. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.
- G. Any termination by Owner pursuant to 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 Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate or discontinue, in whole or in part, 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;

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;
  3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others;
  4. reasonable expenses directly attributable to termination; and
  5. ten percent overhead and profit for those costs agreed to in Paragraphs 15.03.A.1 through 15.03.A.4 above.
- B. 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, and verify such proposal and negotiate an equitable amount and the Contract may be modified accordingly
- C. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 45 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## **ARTICLE 16 – DISPUTE RESOLUTION**

## **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, or by facsimile transmission and followed by written confirmation, 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.
- C. Electronic mail and messages will not be recognized as a written notice.
- D. If the Contractor does not immediately notify the Owner in writing of the belief that a field order, additional work by other contractors or the Owner, or subsurface, latent, or unusual unknown conditions entitles the Contractor to a Change Order, no consideration for time or money will be given the Contractor.

#### 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. Each and every provision of this Agreement shall be construed in accordance with and governed by Georgia law. The parties acknowledge that this Contract is executed in Cherokee County, Georgia and that the Contract is to be performed in Cherokee County, Georgia. Each

party hereby consents to the Cherokee County Superior Court's sole jurisdiction over any dispute which arises as a result of the execution or performance of this Agreement, and each party hereby waives any and all objections to venue in the Superior Court of Cherokee County, Georgia.

#### 17.06 *Headings*

- A. Article 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 Engineer. 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 Engineer.
- B. Contractor shall maintain throughout the term of the Contract, 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.

END OF SECTION

## SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition, with Modifications). All provisions which are not so amended or supplemented remain in full force and effect.

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

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

The provisions in this Section of the Specifications shall govern in the event of any conflict between this Section and the General Conditions.

### SC-4.02 *Subsurface and Physical Conditions*

Add the following new paragraphs immediately after 4.02.B:

4.02.C In preparation of Drawings or Specifications, Engineer or Related Entities relied on the following reports of explorations and tests of subsurface conditions at the Site:

4.02.C.1 None.

4.02.D In preparation of Drawings and Specifications, Engineer or Related Entities relied upon the following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:

4.02.D.1 None.

4.02.E. Copies of reports itemized in SC-4.02 that are not included with Bidding Documents may be examined at the office of the Engineer during regular business hours. These reports are not part of the Contract Documents, but the "technical data" contained therein are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer and Related Entities in the preparation of Drawings and Specifications.

### SC-5.04 *Contractor's Liability Insurance*

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide the following coverages for not less than the following limits or greater where required by Laws and Regulations:

5.04.A.1 and 5.04.A.2 – For coverage as required by General Conditions 5.04.A.1 and 5.04.A.2 (Worker's Compensation):

(1) State	Statutory Limit
(2) Federal	Statutory Limit
(3) Employer's Liability	\$5,000,000

5.04.A.3-A.5 – For coverage as required by General Conditions 5.04.A.3, 5.04.A.4 and 5.04.A.5 (General Liability) which shall also include broad form property damage liability, loss of use of tangible property, and loss of use of property that has not been damaged but has been rendered useless nonetheless, completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR other than Contractor's work or equipment:

(1) Aggregate	\$5,000,000
(2) Each Occurrence	\$2,000,000
(3) Products and completed operations, aggregate	\$5,000,000
(4) Personal and advertising injury	\$2,000,000
(5) Fire Damage/Legal Liability	\$500,000
(6) Medical Expense Limit any one person	\$10,000
(7) Property damage liability insurance will provide explosion, collapse and underground coverages where applicable.	
(8) Excess/Umbrella Liability:	
General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000

The aggregate policy limits for general liability coverage must be designated to the Project. The excess/umbrella policy must provide additional coverage for policy limits in excess of the general liability (including products and completed operations), automobile liability, contractual liability and employer's liability. Mobile equipment coverage described in S.C. 5.03.G must be included.

5.04.A.6 – For coverage as required by General Conditions 5.04.A.6 (Automobile Liability):

- (1) Combined Single Limit (Bodily Injury and Property Damage): \$2,000,000

Coverage must be provided for all owned/leased, hired and non-owned vehicles.

5.04.B.3. *Contractual Liability Insurance:*

The Contractual Liability coverage required by paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:

(1) General Aggregate	\$2,000,000
(2) Each Occurrence (Bodily Injury and Property Damage)	\$2,000,000

The aggregate policy limits for Contractual Liability must be designated to the Project. As indicated in S.C. 5.04.A.3-A.5, the excess/umbrella policy must provide additional coverage in excess of these amounts.

#### SC-6.02 *Labor; Working Hours*

Add the following subparagraph 6.02.D.1:

1. The rate of \$95.00/hour will apply for the overtime work performed on behalf of the Owner.

#### SC-9.03 *Project Representative*

Add the following new paragraphs immediately after Paragraph 9.03.A:

B. The Resident Project Representative (RPR) will be Engineer's or Engineer's Consultant's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be only through or with the full knowledge and approval of Contractor. The RPR shall:

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
4. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
5. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's

recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

6. *Review of Work and Rejection of Defective Work:*

- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

7. *Inspections, Tests, and System Startups:*

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

8. *Records:*

- a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- b. Maintain records for use in preparing Project documentation.
- c. Obtain GPS locations along center line of pipe at every joint of pipe, at fittings and other important locations. Contractor shall assist RPR in holding the GPS rover unit rod on top of the pipe as needed, wait for the GPS unit to obtain an accurate reading (for a reasonable time but not to exceed 15 minutes) and return the equipment to the RPR before safety shoring is removed.

9. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
10. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
11. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
12. *Completion:*
- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
  - b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
  - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.
- C. Contractor is hereby advised by Engineer that the RPR is not authorized to:
- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
  - 2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
  - 3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
  - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.

5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

SC-12.03 *Delays*

Add the following subparagraphs to Paragraph 12.03.C:

1. Extensions of time will be granted for abnormal inclement weather conditions that delay the critical path of the progress of the work.
2. Abnormal weather is defined as days lost to weather where precipitation exceeds 0.10-inches.
3. Contract Time will not be extended for normal bad weather. The Contract Time in the Contract Documents includes due allowance for calendar days on which work cannot be performed outdoors. For the purpose of this Contract, Contractor agrees that he may expect to lose a total number of calendar days between the Notice to Proceed date and the Substantial Completion date due to weather in accordance with the following table which is the average from three local area weather stations:

<b>Month</b>	<b>Days</b>
January	7
February	7
March	7
April	6
May	6
June	7
July	8
August	7
September	5
October	4
November	5
December	7

4. If the total accumulated (not on an individual month-by-month basis) number of calendar days (pro-rated for the Notice to Proceed date month and/or Substantial Completion date per the table above as may be applicable to reflect the actual dates of these occurrences) lost to weather from the Notice to Proceed date to the Substantial Completion date exceeds the total accumulated number to be expected for the same period from the table above, time for completion will be extended by the number of calendar days needed to

include the excess number of calendar days lost. The contractor shall submit with each pay request a letter stating the number of days lost for the respective pay period so that it may be agreed upon by all parties.

5. No reduction in Contract Time shall be imposed if the total days actually lost to weather is less than the total to have been expected for that same period.

END OF SECTION