This Agreement effective as of \_\_\_\_\_\_\_\_, 20\_\_\_, between \_\_\_\_\_\_\_\_\_ incorporated in \_\_\_\_\_\_\_\_\_, USA, and having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Owner") and \_\_\_\_\_\_\_\_\_\_\_\_\_ incorporated in \_\_\_\_\_\_\_\_\_\_\_\_\_, USA, and having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Contractor").

WHEREAS,

A.Owner plans to have constructed the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (project description) located in \_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the "Project" or the "Work");

B.Owner has contracted with \_\_\_\_\_\_\_\_\_\_\_\_\_ (architect) to provide professional engineering services required to design the Project; and

C.Architect has provided the design for the Project consisting of the plans and specifications.

D.Owner requires construction services in connection with the Project.

E.Contractor represents that it is experienced in projects of this type and is ready, willing and able to perform the services called for herein,

NOW THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties hereto agree as follows:

1.Architect

For the purposes of the Contract Documents, any reference to "Architect" shall be understood to refer to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (architect).

2.Project Description

The Project for which construction services are to be provided is described in a general way in Exhibit A.

3.Contract Documents

The documents which make up the complete agreement between Owner and Contractor are listed in Exhibit B.

4.Schedule

Contractor shall commence work on its obligations set forth herein and shall progress and complete them in accordance with Exhibit C.

5.Compensation

Contractor's Compensation is set forth in Exhibit D.

6.Progress and Final Payments

6.1.Invoicing

By the first day of each month following commencement of work under this Agreement Contractor shall submit an Invoice to Owner on account of the work done through the twenty-fifth day of the prior month. These Invoices shall be in a form acceptable to Owner and shall be accompanied by such supporting data as may be reasonably required by Owner.

6.2.Lien Waiver

Starting with the second such Invoice, each shall be accompanied by a partial waiver of mechanic's lien in the amount of the last prior invoice.

6.3.Audit

Owner shall have the right to audit Contractor's books and records prepared or kept in connection with this Project at all reasonable times and places.

6.4.Retainage

Upon approval of each Invoice or portion thereof by Owner, Owner shall pay 90 percent of the approved amount; however, in no event will Owner make any payment which will cause the total payments under this Agreement to exceed the Compensation agreed upon in Compensation Exhibit.

6.5.Payment

Appropriate payments for Invoices which are in proper form and are accompanied by the required supporting data shall be made within thirty days of their receipt by Owner.

6.6.Final Payment

Upon Owner's agreement that Project Final Completion has been achieved, Owner shall process a payment for any balance remaining due to the Contractor under the Compensation set forth in this Agreement.

6.7.Time of Final Payment

Payment of the final invoice shall be made within thirty days of Owner's written approval of Contractor's final Invoice.

6.8.Final Waivers

At the time of this final payment, the Contractor shall provide Owner with a final waiver of mechanic's lien in the full amount of all payments made by Owner to Contractor.

7.Insurance and Bonds

7.1.Insurance Requirements

Contractor shall purchase with its own funds and maintain throughout the life of this Agreement the minimum types and amounts of insurance set forth on Exhibit E as evidenced by a Certificate of Insurance in the form set forth in Exhibit F.

7.2.Bond Requirements

Contractor shall purchase and maintain bonds in accordance with the requirements set forth on Exhibit K. The cost of these bonds are included in the firm fixed construction price.

8.Waiver of Liens

8.1.Indemnity for Liens

If a notice of lien, lien, or the like, alleging nonpayment should be filed or served upon Owner by a contractor, laborer, materialman or subcontractor on the Project, Owner shall have the right to retain out of any payment to Contractor then due, or thereafter to become due, an amount sufficient to completely indemnify Owner against said potential lien. In the event the lien should come to be perfected, Owner may call upon the Contractor to satisfy it and obtain its removal within ten days and upon its failure to do so may pay the amount of the lien from the retained funds and, within thirty days thereafter, pay the balance, if any, less Owner's expenses in the matter (including court costs and actual attorneys' fees), to the Contractor. Contractor specifically agrees in this event that Owner may consider the amount of the lien as presumptively correct. In the event the lien is not perfected within the period of time set by law for the enforcement of liens, or within such extended time as the lienor may by law obtain, Owner shall pay, without interest to the Contractor whatever sums were retained, less Owner's expenses (including court costs and attorney's fees) in disproving the lien. The Contractor shall also be responsible for the discharge of any lien, or for the interest on any money deposited for the purpose of discharging any lien.

8.2.Waiver of Liens

Contractor hereby waives and shall have all Subcontractors and materialmen waive all Liens pursuant to the laws applicable to the Project. Exhibit J, which is attached hereto and incorporated herein by this reference, is a copy of a waiver of lien to be executed by the Contractor and each of the Subcontractors. No Subcontractor shall perform any of the Work until a copy of Exhibit J executed by such Subcontractor has been presented to Owner by Contractor. In addition, all subcontracts and purchase orders shall include effective waivers of all Liens.

8.3.Discharge of Liens

Contractor and Subcontractor and materialmen shall fully and promptly pay and discharge any and all commitments against any and all demands and claims which may or could ripen into Liens or claims of Liens on the Project or the property upon which the Project is situated. Contractor shall not at any time suffer or permit any Lien, under the laws of \_\_\_\_\_\_\_\_\_ (state) or otherwise to remain on record against the Project or the property upon which the Project is situated. Such a Lien, until it is removed, shall preclude any payment and any and all claims or demands for any payment under or by virtue of the Contract Documents.

9.Confidentiality

9.1.Confidential Information

Contractor recognizes that certain engineering, technical and other information supplied by Owner, or with which Contractor, its employees, Subcontractors or Sub-subcontractors may come into contact or which may be generated under the Agreement by any party, shall be confidential information and proprietary to Owner.

9.2.Contractor Confidentiality Obligations

9.2.1.Nonuse

Neither Contractor nor any of its employees, Subcontractors or Sub-subcontractors shall use such information, either directly or indirectly, other than in the performance of Contractor's obligations hereunder.

9.2.2.Nondisclosure

Neither Contractor nor any of its employees, Subcontractors or Sub-subcontractors shall disclose any such information to any person, firm or corporation without the prior written consent of Owner.

9.3.Employee Agreement

Contractor shall take steps to insure that Contractor's employees, Subcontractors or Sub-subcontractors exposed or assigned to this Project or performing any Work related thereto shall execute a copy of the "Employee Agreement," which is attached hereto as Exhibit H and incorporated herein by this reference.

10.No Publicity

Contractor shall not publicize its involvement in the Work or supply any person with information concerning the Project without prior written approval from Owner except where necessary to carry out the obligations under the Contract Documents.

11.Miscellaneous Provisions

11.1.Entire Agreement

This Agreement, the Contract Documents listed herein, and the exhibits and attachments hereto set forth all the covenants, provisions, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth.

11.2.Governing Law

This Agreement shall be governed by the laws of \_\_\_\_\_\_\_\_\_\_ both as to interpretation and to performance.

11.3.Assignment

Neither party hereto may assign its interest or obligations hereunder without the written consent of the other; provided, however, that Owner may freely assign its interest or obligations hereunder to any parent corporation or subsidiary.

11.4.Terms

Unless otherwise agreed, terms in this Agreement shall have the same meaning as those in the General Conditions for Construction.

11.5.Purchase Order Terms and Conditions

It is agreed and understood that if Owner issues Contractor any Purchase Orders in connection with the services covered by this Agreement, any preprinted terms and conditions appearing on such Purchase Orders shall be superseded by the terms and conditions of the Contract Documents.

11.6.Exhibits

Any and all Exhibits referred to in this Agreement are hereby incorporated herein by reference and are made a part hereof as if they were included in the text hereof.

11.7.Notices

Any notices required to be given by the parties hereto shall be sent to the person and address shown on Exhibit G hereto by certified mail, return receipt requested, or delivered in person.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CONTRACTOROWNER

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

EXHIBIT A

PROJECT DESCRIPTION

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

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EXHIBIT B

CONTRACT DOCUMENTS

Listed below are the documents which make up the Contract Documents as that term is used in this Agreement:

1.DOCUMENTS

1.1.Standard Agreement for Construction Services effective on \_\_\_\_\_\_\_\_\_, 20\_\_\_.

1.2.The Owner's Standard General Conditions attached as Exhibit I

2.DRAWINGS

Drawing number Date Revision number

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

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3.SPECIFICATIONS

Title Date Revision numbers

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4.ADDENDA (issued prior to the date of the Agreement):

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5.MODIFICATIONS issued after the date of the Agreement:

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EXHIBIT C

SCHEDULE

The work to be performed under the Agreement shall be commenced on \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Subject to adjustments authorized by Owner, substantial completion shall be achieved no later than \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

EXHIBIT D

COMPENSATION

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

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EXHIBIT E

CONTRACTOR'S INSURANCE REQUIREMENTS

E.1.Obligation to Maintain Insurance

Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

E.1.1claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;

E.1.2claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;

E.1.3claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

E.1.4claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (2) by any other person;

E.1.5claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

E.1.6claims 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.

E.2.Limits of Liability

The insurance required by paragraph E.1 shall be written for not less than the limits of liability specified on the Certificate of Insurance, attached to the Contract as Exhibit F, and shall be a part of the Contract Documents. Contractor shall require each Subcontractor and each Sub-subcontractor to provide coverage adequate to protect the Subcontractor or Sub-subcontractor and its employees.

E.3.Coverages

The General Liability Policy shall include coverage for:

E.3.1Premises -- Operations including x-c-u (explosion, collapse and underground damage);

E.3.2Independent Contractor's Protection;

E.3.3Products and Completed Operations;

E.3.4Contractual, including specified Provisions for Contractor's obligations under the General Conditions;

E.3.5Broad Form Coverage for Property Damage; and

E.3.6Pollution and/or Environmental Damage.

E.4.Additional Insureds

Owner shall be named as an additional insured on the Contractor's general and automobile liability insurance policies which shall also include a severability of interest or cross liability provision. The language in the policies and/or endorsements naming Owner as an additional insured shall include this sentence:

"The inclusion herein of any person or entity as an additional insured shall not affect any right such person or entity would have as a claimant hereunder if not so included."

E.5.Certificates and Thirty-Day Notice

Contractor's insurance certificate shall contain a provision that coverages afforded under the policies listed will not be canceled or reduced until at least thirty days after written notice to the certificate holders. Contractor shall provide Owner with current insurance certificates throughout the life of the Agreement.

E.6.Failure to Purchase Insurance

If Owner or Contractor is damaged by failure of the other to purchase or maintain insurance required under this Exhibit E, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs properly attributable thereto.

EXHIBIT F

CERTIFICATE OF INSURANCE

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

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EXHIBIT G

NOTICES

To Owner:

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

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

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To Contractor:

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

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

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

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT H

EMPLOYEE CONFIDENTIALITY AGREEMENT

In consideration of my employment, or my continued employment, as the case may be, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Contractor") and the performance of services in such employment for or on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the purposes of this Agreement hereinafter referred to as "Company"), I agree with Contractor as follows:

So long as I shall remain in the employ of Contractor I shall devote my time and ability to the service of the Company in such capacity as Contractor shall from time to time direct, and I shall perform my duties faithfully and diligently.

I shall not, during my employment or thereafter, use or disclose to others without the prior written consent of the Company, any trade secrets, secret "know-how," confidential or secret technical information or other confidential information relative to the business of the Company, obtained by me while in the employ of Contractor. Upon leaving the employ of the Contractor I shall not take with me any confidential data, drawings, or information obtained by me as the result of my employment, or any reproductions thereof.

All such Company property and all copies thereof shall be surrendered to Contractor on termination or at any time on request.

This agreement shall inure to the benefit of the Company, its subsidiaries, allied companies, successors and assigns or nominees of the Company.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_.

(SEAL)

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT I

OWNER'S STANDARD GENERAL CONDITIONS FOR CONSTRUCTION

1.CONTRACT DOCUMENTS

1.1.DEFINITIONS

1.1.1.AGREEMENT

The Agreement is the agreement between Owner and Contractor for the performance of the Work in accordance with the Contract Documents as modified in accordance with these General Conditions.

1.1.2.CONTRACT DOCUMENTS

The Contract Documents are the Documents identified in Exhibit B.

1.1.3.DRAWINGS

The Drawings are drawings listed in Exhibit B.

1.1.4.LAWS

The term "Laws" as used in this agreement shall mean all local ordinances, requirements of city and county building codes, local sanitary laws, rules and regulations, requirements of national or federal and state authorities which are applicable to the Project or the Work, including all orders and interpretations by all governing public authorities.

1.1.5.PROJECT

The Project is the total construction contemplated by the Contract Documents.

1.1.6.SPECIFICATIONS

The Specifications are the written requirements for materials, equipment, construction systems, standards and workmanship referred to in Exhibit B.

1.1.7.WORK

The Work is the process by which the construction called for in the Contract Documents is accomplished. The Work includes labor, materials and equipment required to construct the Project.

1.2.CONTRACT INTERPRETATION

1.2.1.INTERPRETATION

The Contract Documents are to be interpreted to include all items necessary for the proper and complete performance of the Work and construction of the project. Work that is reasonably inferable from the Contract Documents shall be required if it is consistent with the intent of the Contract Documents. In the Contract Documents, any obligation of Contractor to Owner shall be interpreted to include a corresponding obligation of Contractor to Owner in respect of the Subcontractors.

1.2.2.INTERPRETATION OF DRAWINGS

Drawings are diagrammatic, and shall be followed as closely as actual construction and work of individual trades will permit. Elevations and grade lines on the drawings show heights in relation to the bench mark established at the project site. Scale details shall govern over general drawings, and large scale details shall govern over small scale details.

1.2.3.RELATIONSHIP TO SUBCONTRACTORS

The Contract Documents shall not be construed to create any contractual relationship between Owner and any of Contractor's Subcontractors.

1.2.4.RELATIONSHIP TO ARCHITECT

The Contract Documents do not and shall not be construed to create any relationship, contractual or otherwise between the Architect and Contractor.

1.2.5.CONFLICT BETWEEN CONTRACT DOCUMENTS

The parts of the Contract Documents, including the drawings and specifications are intended to be complementary and to describe and to provide documentation for the entire project. In the event of conflict, drawings and specifications shall take precedence over the general description of the project. Large-scale drawings shall take precedence over small-scale drawings covering the same subject matter; but the drawings shall not take precedence over the specifications nor the specifications precedence over the drawings. If the drawings and specifications are at variance with one another, contractor shall at once so notify Owner in writing before proceeding with any part of the project affected thereby. Owner shall resolve the discrepancy and shall give contractor written instructions on how to proceed.

1.3. OWNERSHIP OF CONTRACT DOCUMENTS

1.3.1.OWNERSHIP

All Drawings, Specifications and copies thereof furnished by the Architect or Owner are and shall remain the property of Owner. They shall not be used on any other Project by Contractor and, with the exception of one contract set for each party to the Agreement, shall be returned to Owner at the completion of the Work. All working documents are and shall remain the property of Owner and shall be returned to Owner upon Final Completion or be accounted for to Owner's satisfaction.

2.ARCHITECT

2.1.DEFINITIONS

2.1.1.ARCHITECT

As used in the Contract Documents the word "Architect" means the persons or entity defined in the Agreement as the Architect.

2.2.DUTIES AND RESPONSIBILITIES

2.2.1. REPRESENTATION

The Architect shall not be Owner's representative with regard to Contractor or subcontractor or with regard to activities at the construction site.

2.2.2.INSPECTION

Architect shall have the right to inspect the Work as often as necessary to determine that the Work is being accomplished in accordance with the Contract Documents. Inspection of the Work by the Architect shall not relieve Contractor of its obligations to perform the Work strictly in accordance with the Contract Documents.

2.2.3.MEANS OF CONSTRUCTION

Architect is not responsible for the acts or omissions of Contractor, nor is Architect responsible for construction means, methods, techniques, sequences, procedures or safety precautions at the site.

2.2.4.ACCESS TO SITE

Architect shall have access to the site of the Project at all reasonable times. However, Architect shall take no actions which unreasonably hinder the progress of the Work.

2.2.5.REVIEW OF SUBMITTALS

Architect shall establish and operate a system to review and recommend to Owner the appropriate action to take with regard to Contractor's Submittals. Architect's review of Contractor submittals shall be for conformance with the Contract Documents.

2.2.6.NO WARRANTY

Owner makes no representation or Warranty in respect of Architect's performance.

3.OWNER

3.1.DEFINITION

3.1.1.OWNER

The Owner of the Project is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which may be acting through one of its Divisions or Subsidiaries.

3.2.DUTIES AND RESPONSIBILITIES

3.2.1.AUTHORIZED REPRESENTATIVES

Owner shall designate its authorized representatives in writing, setting forth the limits of their authority.

3.2.2.PROJECT MANAGER

Owner shall designate a Project Manager who shall be available as required, at the site of the work. The Project Manager shall be authorized to:

1.Act as liaison between Owner and Contractor at the job site.

2.Make field decisions on behalf of Owner.

3.Suspend Contractor's operations for conduct in violation of the requirements of the Contract Documents.

4.Inspect and approve specified details and inspect for adherence to design and completeness of details shown on Contract Documents.

5.Examine Submittals and render written decisions so as to avoid unreasonable delays in the progress of Contractor's work.

6.Authorize Change Orders.

3.2.3.SURVEYS AND SOIL REPORTS

Owner shall provide Contractor with necessary surveys of the site, soil reports, results of subsurface investigations, legal limitations, descriptions of utilities and their location and a legal description of the Project site.

3.2.4.EASEMENTS

Owner shall obtain and pay for easements required for the completion of the Project.

3.2.5.DRAWINGS

Owner shall provide to Contractor only the Drawings which the Contract Documents specifically require to be furnished by Owner and such Drawings shall be provided to Contractor free of charge

3.2.6.PROMPTNESS AND ACCURACY OF SERVICES AND INFORMATION

Owner shall provide the services and information above with reasonable promptness.

3.3.OWNER'S RIGHTS

3.3.1.RIGHT TO INSPECT WORK

Owner shall have the right to inspect the Work at all times. Such inspection shall not relieve Contractor of any of its obligations to perform the Work strictly in accordance with the Contract Documents.

3.3.2.RIGHT TO REJECT WORK

Owner shall have authority to reject Work which does not conform to the Contract Documents. Owner may require special inspection or testing of the Work, whether or not such Work has been fabricated, installed or completed.

3.3.3.RIGHT TO STOP WORK

If Owner reasonably believes that Contractor is failing to carry out the Work in accordance with the Contract Documents, then Owner may order Contractor to stop the Work, or a portion of the Work until such time as the cause for such stop order has been eliminated. Owner's right to stop the Work shall not obligate Owner to do so for the benefit of Contractor.

3.3.4.RIGHT TO CARRY OUT WORK

If Contractor should fail to prosecute the Work properly (including the failure to man the job due to labor disputes of any type) or fail to perform any provision of the Contract Documents, including unauthorized schedule delay, Owner, after three days' written notice to Contractor without correction, may, without prejudice to any other rights or remedy Owner may have, have such deficiencies made good by others, and may deduct the cost thereof from the payment then or thereafter due to Contractor.

3.3.5.OWNER'S ACCESS

Owner shall at all times have access to the Work and Contractor shall provide facilities for such access.

3.3.6.OWNER'S ADDITIONAL RIGHTS

The rights stated in this Article shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

4.CONTRACTOR OBLIGATIONS

4.1.DEFINITION

4.1.1.CONTRACTOR

Contractor is identified by name and address in the Agreement.

4.2.ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS

4.2.1.REVIEW OF CONTRACT DOCUMENTS

Contractor shall carefully study and compare the Contract Documents and shall at once report to Owner any error, inconsistency or omission discovered, or any variance from any Laws that relate to the Work. Sizes, elevations and locations of existing facilities to which connections are to be made shall be verified at the Project site by Contractor prior to beginning the Work.

4.2.2.MINOR ERRORS

Where, because of a minor error or omission in the Drawings, something manifestly necessary to the completion of the Work is not shown on the Drawings, it is agreed that the intent of Owner and Contractor is that such omitted material or Work shall be supplied by Contractor as a part of the Work and without additional compensation.

4.2.3.LIABILITY FOR ERRORS

Contractor shall not be liable to Owner or Architect for any damages resulting from any such errors, inconsistencies or omissions in the Contract Documents, except for such damages attributable to any such errors, inconsistencies or omissions that could have been prevented but for the negligence of Contractor.

4.3.CONTRACT DOCUMENT OBLIGATION

4.3.1.CONTRACTOR DRAWINGS

All drawings not specifically required by the Contract Documents to be provided by Owner shall be supplied by Contractor including Shop Drawings as specified herein. All drawings supplied by Contractor shall be subject to the provisions hereof concerning review and approval.

4.3.2.NECESSITY OF CONTRACT DOCUMENTS

Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such Work.

4.3.3.PROJECT LINES

Contractor shall be responsible for the accuracy of the Project lines and levels. Contractor shall compare carefully the levels shown on the Drawings with existing levels and shall call any discrepancies to the attention of Owner before proceeding with the Work. The Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated and/or as necessary to drain.

4.3.4.FAILURE TO BECOME ACQUAINTED

No allowance of additional compensation or extension of time for completion will subsequently be made to the Contractor on account of its failure to fulfill its obligations under this Paragraph.

4.4.MANAGEMENT, SUPERVISION AND PROCEDURES

4.4.1.LEVEL OF SKILL

Contractor shall use its best skill and attention in managing, supervising and directing the Work.

4.4.2.CONSTRUCTION

Means Contractor shall be solely responsible for all construction means, safety precautions and for the coordination of all of the Work.

4.4.3.RESPONSIBILITY FOR EMPLOYEES AND OTHERS

Contractor is solely responsible for the acts, omissions and defaults of its employees, Contractors and any other person or entity involved in or performing any of the Work called for in the Contract Documents.

4.5.CONTRACTOR'S LABOR

4.5.1.PURCHASE OF LABOR

Contractor shall provide or contract for and pay for all labor or services required for the Work.

4.5.2.SKILLED LABOR FORCE

Contractor shall maintain at the Project site a force of workers skilled in the work to which they are assigned and sufficient to accomplish the Work. Contractor shall not employ on the Work any person not skilled in the work assigned to such person.

4.5.3.DISCIPLINE

Contractor shall enforce discipline and good order among its and its Subcontractor's employees.

4.5.4.NO UNSKILLED LABOR

Unskilled workers shall not be permitted on the site and Contractor shall remove from the Project any worker about whom Owner makes a reasonable objection.

4.5.5.FOREMAN

All work shall be performed under the supervision of an experienced and competent foreman.

4.5.6.MANPOWER REPORT

Contractor shall submit a weekly manpower report to Owner throughout the course of the work, which shall show the number of tradesmen of each trade working at the site of the Work during the prior week, the number of straight time and overtime hours of each trade worked, and to what portions of the Work such labor was applied.

4.5.7.ASSIGNMENT OF AGREEMENTS FOR LABOR

Purchase orders, subcontracts and other agreements for labor entered into by Contractor in support of its performance of the Work shall include a provision whereby they may be assigned to Owner.

4.6.MATERIALS AND EQUIPMENT

4.6.1.PURCHASE

Contractor shall purchase or otherwise arrange for and shall pay for all materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities or services required for the complete and workmanlike performance of the Work, including but not limited to temporary and permanent structures whether or not incorporated or to be incorporated into the Work.

4.6.2.QUALITY

Unless otherwise specifically provided for in the Specifications, all equipment, materials and articles incorporated in the Work are to be new, of recent manufacture and of the best grade of their respective kind for the purpose.

4.6.3.NO SUBSTITUTION

No substitution of materials, equipment, articles, or processes required under the Agreement shall be made without written approval of Owner's Project Manager.

4.6.4.APPROVALS

Samples of materials and mockups shall be submitted for approval when so directed.

4.6.5.EQUIPMENT MANUALS

Contractor shall furnish to Owner \_\_\_\_\_\_\_ copies of schematic diagrams covering installations of all electrical, mechanical and pneumatic controls, operating instructions and maintenance recommendations for all machinery, equipment and systems purchased by Contractor and installed in the Project.

4.6.6.PARTS LIST

Contractor shall provide a printed parts list for all items which might be subject to replacement.

4.6.7.OPERATING INSTRUCTIONS

The operating instructions shall state all information necessary for Owner to operate, use, maintain and service the equipment fully and efficiently.

4.6.8.MAINTENANCE INSTRUCTIONS

Maintenance and operating instructions shall be typed and furnished in \_\_\_\_\_\_\_\_\_ copies.

4.6.9.DELIVERY OF MANUALS

Manuals shall be prepared and transmitted to Owner not less than twenty days prior to the completion date for the Work. The Work shall not be reviewed or accepted for final payment until Owner has received manuals covering such Work.

4.6.10.EQUIPMENT WARRANTIES

Warranties issued by Contractor and the manufacturers of machinery and materials, equipment and/or supplies purchased by Contractor for use in the Project shall:

(1)be collected by Contractor, indexed and bound;

(2)be submitted to Owner before final acceptance of the Project; and

(3)be issued or assignable by their terms to Owner and shall in the latter case be transferred to Owner.

4.6.11.START-UP OF SYSTEMS

Contractor shall be responsible for start-up of all systems and equipment and will have made sufficient allowances in its Cost of Construction to cover contingencies arising out of the start-up of individual systems, equipment and the total facility. Contractor shall comply fully with each manufacturer's specifications and instructions. Equipment specified to be furnished with manufacturer's supervision of start-up shall be placed in operation only under such supervision.

4.6.12.ASSIGNMENT OF PURCHASE ORDERS

Purchase orders, subcontracts and other agreements for materials and equipment entered into by Contractor in support of its performance of the Work shall include a provision whereby they may be assigned to Owner.

4.6.13.HAZARDOUS OR TOXIC MATERIALS

No asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials shall be specified nor used in construction including, but not limited to, building materials, production processes and equipment, and utilities and other support processes and equipment.

The construction project manager shall communicate and enforce this prohibition with contractors, subcontractors, and suppliers. The construction project manager shall provide a written certification at completion of construction to the Owner confirming that no asbestos-containing material, heavy metal-containing paints/coating, or PCB-containing materials were specified nor used in construction of the facility.

4.7.TAXES

4.7.1.PAYMENT OF TAXES

Contractor shall pay all sales, consumer, use and similar taxes levied in respect of the Work.

4.8.LEGAL COMPLIANCE, BUILDING PERMITS, FEES AND NOTICES

4.8.1.APPLICATION AND PAYMENT FOR PERMITS

Owner shall apply for, obtain and pay for any and all required building permits. Contractor shall apply for, obtain and pay for any and all other required approvals, governmental fees, certificates of occupancy, licenses and inspections necessary for the proper execution and completion of the Work.

4.8.2.COMPLIANCE WITH LAWS

Contractor shall give all notices and comply with all Laws.

4.8.3.COMPLIANCE OF CONTRACT DOCUMENTS

It shall be Contractor's responsibility to make certain that the Contract Documents are in accordance with applicable Laws.

4.8.4.VARIANCE OF CONTRACT DOCUMENTS

In the event Contractor believes that any of the Contract Documents are at variance with such applicable Laws in any respect, Contractor shall promptly notify Owner in writing and any necessary changes shall be accomplished by an appropriate modification to the Contract Documents.

4.8.5.WORK IN VIOLATION OF LAWS

Contractor shall assume full responsibility for any work Contractor or any subcontractor performed while knowing or having reason to know that the work was contrary to any Laws.

4.8.6.DELIVERY OF CERTIFICATES

At or before Owner's final acceptance of the Work, Contractor shall deliver to Owner all certificates, or other evidence which may be required to establish the compliance of the Work with all applicable Laws.

4.9.SUPERINTENDENT

4.9.1.APPROVAL

Contractor shall at all times maintain a competent superintendent, approved by Owner, on the site of the Work to receive instructions and to act with authority for Contractor.

4.9.2.CHANGE

The Superintendent shall not be changed without the consent of Owner except where the Superintendent proves to be unsatisfactory to Contractor or ceases to be in Contractor's employ.

4.9.3.REPLACEMENT OF MANAGEMENT

Should the management of the Work be unsatisfactory to Owner, Owner may require Contractor to replace personnel so responsible, after adequate reasons for the replacement have been given Contractor by Owner.

4.9.4.AUTHORITY OF SUPERINTENDENT

Contractor's Superintendent in charge of the Work shall represent Contractor and all directions given to the Superintendent or Contractor's authorized representatives by Owner shall be as binding as if given to Contractor.

4.10.PROGRESS SCHEDULE

4.10.1.PREPARATION

Contractor, immediately after being awarded the Agreement, shall prepare and submit for Owner's approval and Architect's information estimated critical path progress schedule for the Work (hereinafter referred to as the "CPM Schedule").

4.10.2.SCOPE

The CPM Schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

4.10.3.CONTENT

The CPM schedule shall as a minimum show the following:

1.The start and finish date of each activity.

2.The anticipated percent of completion at end of each month.

3.The weighted labor value expressed as a percentage of the total labor cost of the work for each activity.

4.The final manpower curves by trade.

5.The anticipated purchase and delivery of major materials.

6.Any activity having a duration of more than fifteen working days shall be segmented into fifteen-day increments.

7.The activities identified as being on the critical path to scheduled completion of the Project.

4.10.4.MANPOWER REPORT

A daily manpower report by trade shall be submitted to Owner's Project Manager by noon of the day work is being performed.

4.10.5.UPDATES

The CPM Schedule after being approved by Owner's Project Manager shall be updated by Contractor monthly or as deemed necessary by Owner's Project Manager.

4.10.6.ADHERENCE TO COMPLETION DATES

Contractor shall do what is necessary to maintain the agreed upon completion dates, such as working additional time and/or with additional forces without additional cost to Owner.

4.10.7.FAILURE TO COMPLY

Failure of Contractor to comply with the above approved CPM Schedule may be deemed a default by Contractor under the Agreement.

4.10.8.INFORMATION FROM VENDORS

Information included as part of the Contract Documents furnished by equipment vendors including the expected shipping dates, weights, handling instructions, erection information and all other such data is the best information available and is furnished in good faith, but no warranty of accuracy or completeness is given or implied.

4.10.9.SEQUENCE OF WORK

Owner's Project Manager has the right to require that work done or material assembled on the job be in a definite sequence. This sequence shall be followed unless it is proved by Contractor that to do so will entail extra cost or delay to Contractor.

4.11.OVERTIME WORK

4.11.1.OWNER'S RIGHT TO DIRECT OVERTIME WORK

Owner, in its sole discretion, may direct Contractor by written notice to work overtime at any time during the progress of the Work. The term "overtime" as used herein shall mean hours of labor in excess of the normal work day or week.

4.11.2.CONTRACTOR'S OBLIGATION TO WORK OVERTIME

If so directed by Owner, Contractor agrees to work overtime. Owner agrees to pay Contractor for the actual additional premium portion of the wages incurred and paid by Contractor, provided the rates are approved by Owner in advance in writing and provided Contractor is not in default. Owner shall also pay such taxes as may be imposed by law on such additional premium portion of the wages and the additional cost to Contractor for compensation and liability insurance premiums on such additional premium portion of the wages.

4.11.3.OWNER'S DISCLAIMER

Nothing contained in the Contract Documents shall be construed to require Owner to make any payments for the cost of any overtime necessarily incurred or paid by Contractor in order to fulfill its obligation to complete the Work within the time limit as set forth in the Contract Documents.

4.12. SHOP DRAWINGS AND OTHER SUBMITTALS

4.12.1.DEFINITIONS

1.Shop Drawings are drawings, diagrams, schedules and other data prepared specifically for the Work by Contractor or an entity under contract to Contractor to illustrate some portion of the Work.

2.Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, catalog cuts and other information furnished by Contractor to illustrate a material, product, equipment, or system for some portion of the Work.

3.Samples are actual physical specimens of materials, equipment or workmanship for some portion of the Work.

4.Submittals are any or all of the above defined items.

4.12.2.REVIEW BY CONTRACTOR

All Submittals shall be reviewed, stamped with Contractor's approval and submitted to Owner and Architect with reasonable promptness and in such sequence as to cause no delay in the Work.

4.12.3.CONSEQUENCES OF APPROVAL

Contractor's approval of a Submittal represents that Contractor has determined and verified all materials, field measurements, and field construction criteria related to the Submittal, or will do so, and that Contractor has checked and coordinated the information contained within such Submittal with the requirements of the Work and of the Contract Documents.

4.12.4.LIABILITY FOR DEVIATIONS

Unless Contractor has specifically informed Owner in writing at the time of submission that a Submittal contains a deviation from the requirements of the Contract Documents, Contractor shall not be relieved of responsibility for such deviation by Owner's approval of the Submittal. This responsibility shall include the cost incurred by Owner arising out of the need to make changes in the design and the cost incurred by Contractor to make necessary changes in the construction which results as a consequence of such deviations from the requirements.

4.12.5.LIABILITY FOR ERRORS

Contractor will not be relieved from responsibility for errors or omissions in Submittals by Owner's approval of the Submittals.

4.12.6.REVISIONS

With regard to all resubmitted Submittals Contractor shall in writing direct specific attention to revisions or other deviations which are different from or in addition to those required by Owner on previous Submittals.

4.12.7.WORK REQUIRING SUBMITTALS

Contractor shall perform no Work requiring a Submittal until such Submittal is approved by Owner. Any such Work performed without Owner's approval shall be at Contractor's sole risk.

4.13.USE OF SITE

4.13.1.NO ENCUMBRANCE OF SITE

In respect of the Project site Contractor shall:

(1)not unreasonably encumber the site with their materials or equipment;

(2)confine their operations to areas permitted by Law, the directions of Owner's representative and the Contract Documents.

4.13.2.COMPLIANCE WITH RULES

All regulations and rules of Owner which may be in effect at the site of the Work regarding employment, passes, badges, smoking, fire prevention, signs, and conduct on the property shall be observed by Contractor and its employees.

4.13.3.INTERFERENCE WITH OPERATIONS

Contractor shall not execute the Work with such employees, materials, manufactured products or in such manner as will, in the opinion of Owner, hinder, interfere with, molest or delay the prosecution of the Work, the business operations of Owner at the site, or the Work of any other contractor employed by Owner.

4.13.4.LIMITS OF OPERATIONS

Contractor shall confine its apparatus, equipment, storage of materials and operation of the workers to the limits indicated by local ordinances, permits, or by direction of Owner, and shall not unreasonably encumber the premises with materials or equipment.

4.13.5.ENTRANCE AND EXIT

While performing the Work, delivering materials and/or equipment to the site, Contractor and anyone directly or indirectly employed by or associated with Contractor shall confine their ingress and egress to the site to such entrances and exits as shall be specified by Owner. Contractor shall not use or permit any such persons to use any other ingress or egress to or from the site.

4.13.6.CONTINUING OPERATIONS

Contractor shall immediately take all steps necessary to permit Owner's business operations affected by the Project to continue without interference or disruption.

4.13.7.INTERRUPTIONS OF EXISTING OPERATIONS

Contractor and all Subcontractors shall schedule their work so as not to interfere with Owner's operations and shall inform Owner of the time and type of work that will occur in its existing building. If any interruption of operations is caused by the Work, it shall be done during hours that Owner is not in operation.

4.14.CLEANING UP

4.14.1.CLEAN SITE

At all times Contractor shall keep the Project site free from accumulations of waste materials or rubbish.

4.14.2.REMOVAL OF WASTE

All waste materials and rubbish shall be removed from the Project site as well as all of Contractor's or Subcontractors' tools, construction equipment, machinery, surplus materials and vehicles at the completion of the Work.

4.14.3.OWNER RIGHT TO CLEAN UP

If for any reason, Contractor or any Subcontractor fails to completely clean up the Project site at the completion of the Work, Owner may do so and the cost thereof shall be charged to Contractor.

4.15.CUTTING AND PATCHING

4.15.1.CONTRACTOR RESPONSIBLE

Cutting or patching of work that may be required to complete the Project in accordance with the Contract Documents shall be the responsibility of Contractor.

4.15.2.DAMAGE TO EXISTING STRUCTURE

Contractor shall endeavor not to damage or endanger any portion of the Work or the work of Owner or any separate contractor or any existing structure by cutting, fitting, patching or otherwise altering any work or by excavation.

4.15.3.REPAIRS

If Contractor or any Subcontractor shall damage any portion of the Work or the work of Owner or any separate contractor or any existing structure, then Contractor shall promptly and completely restore same to its original condition.

4.15.4.OTHER WORK

Neither Contractor or any Subcontractor shall cut or otherwise alter the work of Owner or any separate contractor, unless they have written consent of Owner and of any other affected contractor.

4.15.5.CONSENT

Contractor shall not unreasonably withhold from Owner or any separate contractor its consent to their cutting or otherwise altering the Work.

4.16.ROYALTIES AND PATENTS

4.16.1.LICENSES

Contractor shall pay for any and all applicable royalties and license fees, shall defend all suits or claims for infringement thereof and shall save Owner harmless from loss on account of all materials, equipment and processes called for by the Contract Documents.

4.17.INDEMNIFICATION

4.17.1.INDEMNITY

Contractor shall defend, indemnify and hold Owner, its officers, agents, consultants and employees harmless from and against all Losses, arising directly or indirectly out of the performance of or failure to perform this Agreement by Contractor, Subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

4.17.2.SOLE NEGLIGENCE OF INDEMNIFIED PARTY

The indemnity shall not apply to a party indemnified hereunder in respect of Losses arising from the sole negligence of that indemnified party.

4.17.3.PARTIAL NEGLIGENCE OF INDEMNIFIED PARTY

The indemnity shall apply even if Losses were caused, in part, by any act or neglect on the part of Owner, its officers, employees, agents or servants, or others, including parties indemnified hereunder.

4.17.4.LOSSES

For the purposes of this Section, Losses shall include without limitation all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature

4.17.5.ACTS COVERED

Contractor's indemnification obligation under this Paragraph covers all acts arising out of but not limited to the following:

(l)any infringement (actual or claimed) of any industrial property right, whether it be trade secret, patent, trademark, copyright or trade name by reason of any work to be performed hereunder or by reason of anything to be supplied hereunder;

(2)bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom;

(3)caused by, incident to, connected with, or performance of the Agreement, whether or not caused by any act or neglect on the part of Owner, its officers, employees, agents or servants, or others;

(4)arising directly or indirectly out of the presence of any person in, on, or about any part of the Project site or the streets, sidewalks and property adjacent thereto;

(5)arising directly or indirectly out of the use, misuse or failure of any machinery or equipment (including, but not limited to, scaffolding, ladders, hoists, rigging, supports, etc.) whether or not such machinery or equipment was furnished, rented, or loaned by Owner, its officers, employees, agents or servants, or others; or

(6)arising out of failure of Contractor in any way to comply with the requirements of the Fair Labor Standards Act, as amended, and all other applicable laws (including, but not limited to the Occupational Safety and Health Act of or orders or any term or provision of this Agreement (with all of which Contractor agrees to fully comply).

4.17.6.NO LIMITATIONS

The indemnification obligation under the Agreement 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 Subcontractor under Worker's Compensation Acts, Disability Benefits Acts or other employee benefits acts.

4.17.7.SURVIVAL

This indemnity shall survive termination of this Agreement.

4.18.OWNER FURNISHED MATERIALS

4.18.1.LIABILITY

Contractor assumes complete liability for all property, materials or other items provided by Owner to Contractor, unless otherwise provided in the Contract Documents.

4.19.LABOR RELATIONS

4.19.1.AVOIDANCE OF DISPUTES

Contractor shall use its best efforts to prevent and avoid labor disputes or problems which may affect the Work, and to settle any such labor disputes and problems which may arise, in a manner which will not interfere with or delay Contractor's construction of the Work.

4.19.2.NOTICE

Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay its timely performance on the Project, Contractor shall immediately give written notice to Owner, including all relevant information.

4.19.3.SUBCONTRACTS

Contractor agrees to require that in any subcontract issued in connection with the Work the subcontractor shall provide that in the event its timely performance is delayed or threatened by any actual or potential labor dispute, the subcontractor shall immediately notify Contractor's next higher tier Contractor, or Contractor, as the case may be, of all relevant information with respect to such dispute.

4.20.RECORDS AND COMMUNICATIONS

4.20.1.RECORDS MAINTAINED AT SITE

Contractor shall maintain at the site records of all documents relating to the Project, including all contracts; Submittals; permits; a current marked set of working Drawings and Specifications to facilitate the preparation of record drawings; subcontracts; orders for materials, equipment and/or supplies; and governmental, commercial and technical standards and specifications. At all times prior to final payment, Contractor shall deliver duplicates of such documents to Owner if so requested or if required by the technical trade specifications or Contract Documents.

4.20.2.ACCOUNTING RECORDS

Contractor shall maintain cost accounting records relating to the Work on a cash basis in accordance with Generally Accepted Accounting Principles.

4.20.3.PROGRESS RECORDS

Contractor shall keep detailed records of the progress of the Project during all stages of construction and submit monthly progress reports to Owner, in accordance with the Specifications. Contractor shall maintain a daily log of all events occurring on the site or connected with the progress of the Project. Copies of the log shall be sent not less than weekly to Owner.

4.20.4.MINUTES OF MEETINGS

Contractor shall prepare and distribute copies of minutes of meetings pertaining to the Project to Owner's Representative and all other interested parties. At least one bound volume of all minutes shall be maintained by Contractor at the site until Final completion. Items in the minutes shall be numbered consecutively and grouped under divisions and sections similar to the organization of the Specifications.

4.20.5.PRESERVATION OF RECORDS

Contractor shall preserve such records for a period of \_\_\_\_\_\_\_\_\_\_ years after final payment. Owner shall have access to and the right to conduct examinations and audits of all such records at any time after the date hereof. At the expiration of such period Contractor, if requested by Owner, shall turn over such records to Owner to be kept for such time as Owner may elect.

4.20.6.WRITTEN RECORDS

All such records and reports shall be written, accurate, in good order, current and show all changes made during construction.

4.20.7.COMMUNICATION PROCEDURES

Before Contractor's Work begins, complete procedures for communications between and among Owner, Contractor and the Architect shall be established to the satisfaction of Owner. The procedures so established shall be followed throughout the course of the Work unless Owner and Contractor mutually agree in advance and in writing to revise the procedures.

4.21.COMPLIANCE WITH OWNER'S ENVIRONMENTAL PROCEDURES

4.21.1.NOTIFICATION

If, during the course of performance of the work under this Agreement, Contractor, any of its employees or subcontractors encounter or become aware of any environmentally related issues including, but not limited to:

(1)the release or substantial threat of release of a hazardous substance,

(2)the discovery of materials or substances of unknown origins on or under the premises,

(3)the discovery of any underground storage tank,

4.21.2.and/or similar occurrences, then Contractor or such employee or subcontractor shall immediately notify Owner's Representative, Owner's Environmental Engineer at Owner's corporate headquarters as well as Contractor's Representative.

4.21.3.OWNER'S AUTHORIZATION TO ACT

With the exception of appropriate emergency actions necessary to prevent or contain the spread of hazardous substances, Contractor shall not take any action in respect of such environmentally related issue without first obtaining both verbal and written authorization from Owner's Representative. A copy of such written authorization shall be retained by Owner's Representative and made a part of the Project File.

4.21.4.INDEMNITY

Contractor shall indemnify and hold harmless Owner, its divisions, and subsidiaries, their officers, directors, agents, employees and representatives from every claim, damage, loss, liability, action or cause of action, complaint or suit, whether or not groundless or fraudulent, for bodily injury, sickness, disease or death or damage to property arising out of any breach of its obligations to comply with Owner's environmental procedures.

5.REPRESENTATIONS AND WARRANTIES

5.1.GENERAL REPRESENTATIONS AND WARRANTIES

5.1.1.Warranty in Respect of Existing Conditions Contractor represents and warrants that it has examined and thoroughly familiarized itself with all existing conditions affecting the Work, including

(1)all Laws that apply to, relate to or affect the Work;

(2)conditions bearing upon transportation, disposal, handling and storage of materials, equipment and/or supplies; and

(3)the character of materials, equipment and/or supplies and facilities needed in the scheduling and execution of the Work and providing facilities to maintain Owner's operations.

5.1.2.WARRANTY IN RESPECT OF THE SITE

Contractor represents and warrants that it has visited the site, examined the grounds and all existing buildings, Owner's operations, utilities and roads.

5.1.3.WARRANTY IN RESPECT OF WORK ALREADY PERFORMED

Contractor represents and warrants that it has examined all parts of the Work already performed, if any, including that performed by the excavation and foundation contractors and shall immediately report to Owner any problems that are observed.

5.1.4.WARRANTY IN RESPECT OF CONTRACT DOCUMENTS

Contractor represents and warrants that it is satisfied that the results of the examinations and visits correlate with the requirements of the Contract Documents.

5.1.5.WARRANTY IN RESPECT OF SOLVENCY

Contractor represents and warrants that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents.

5.1.6.WARRANTY IN RESPECT OF CAPITAL AND EXPERIENCE

Contractor represents and warrants that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so.

5.1.7.WARRANTY IN RESPECT OF AUTHORIZATION TO DO BUSINESS

Contractor represents and warrants that it is authorized to do business in the jurisdiction where the Work will be performed and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over Contractor and over the Work and the site for the Project.

5.1.8.WARRANTY IN RESPECT OF AUTHORITY

Contractor represents and warrants that its execution of the Agreement and its performance thereof are within its duly authorized powers.

5.1.9.WARRANTY IN RESPECT OF LABOR RELATIONS

Contractor represents and warrants that it presently knows of no facts the existence of which might lead to a labor dispute which might affect the Work.

5.1.10.WARRANTY IN RESPECT OF EEOC OBLIGATIONS

Contractor warrants that it has carefully studied and shall at all times comply strictly with all applicable Laws relating to Equal Employment Opportunity.

5.2.WARRANTY OF WORK

5.2.1.WARRANTY OF QUALITY

Contractor warrants that all Work performed under this contract shall be of good quality, free from defects in workmanship or materials, shall conform to the requirements of the Specifications and other Contract Documents, and shall be fit and sufficient for the purposes expressed in or reasonably to be inferred from, the Contract Documents.

5.2.2.OBLIGATION TO CORRECT WITHIN ONE YEAR

Contractor shall, at no expense to Owner, correct any failure to fulfill the above warranty which may appear at any time within one (1) year (or, in the case of items as to which a longer warranty period is set forth in the Specifications, within such longer period) after the Date of Final Completion. In any event, the warranty herein expressed shall not be sole and exclusive and is additional to any other warranty express or implied.

5.2.3.CONTINUING OBLIGATION TO COMPLY WITH CONTRACT DOCUMENTS

The establishment of the time period of one year after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of the Contract Documents relates only to Contractor's specific obligation to correct the Work, and has no relationship to the time within which Contractor's obligation to comply with the Contract Documents may be sought to be enforced, in court or otherwise, nor to the time in which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work.

5.2.4.NO ENCUMBRANCE

Contractor warrants Title of all Work, materials and equipment covered by an Invoice and that no work, materials or equipment covered by an Invoice will have been acquired by Contractor, or by any other person for whose performance Contractor is responsible, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other person.

5.3.WARRANTY OF MATERIALS

5.3.1.WARRANTY OF QUALITY

Contractor warrants to Owner that materials and equipment furnished under the Agreement will be of good quality, new and of recent manufacture unless otherwise specified in the Contract Documents. Materials not conforming to these requirements, including substitutions not properly approved or authorized may be considered defective. If required by Owner, Contractor shall furnish evidence satisfactory to Owner as to the kind and quality of materials and equipment.

5.4.WARRANTY OF LEGAL COMPLIANCE

5.4.1.COMPLIANCE WITH LABOR LAWS

Contractor warrants that all of the Work will be provided and produced in compliance with all requirements of the applicable Labor laws and regulations.

5.4.2.COMPLIANCE WITH OCCUPATIONAL SAFETY LAWS

Contractor warrants that all the Work shall comply with the applicable laws and regulations relating to occupational safety and health.

5.4.3.COMPLIANCE WITH TOXIC SUBSTANCES REGULATIONS

Contractor warrants that the use and storage of all chemical substances and products containing chemical substances in the Work will comply with the applicable laws and regulations.

5.4.4.COMPLIANCE WITH OTHER APPLICABLE LAWS

Contractor warrants that it will comply with all Laws.

5.4.5.COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor warrants that it is knowledgeable in state and federal environmental laws applicable to the project and that it will conduct itself in the course of the project in full compliance with all such laws, notifying Owner in the event of any significant environmental occurrence.

5.5.SURVIVAL OF WARRANTIES

5.5.1.SURVIVAL

The representations and warranties herein shall survive the execution and delivery of the Agreement and the final completion of the Work.

5.6.BREACH

5.6.1.BREACH OF WARRANTY

Failure of Contractor to perform in accordance with any of the warranties in this Article shall be considered as a default by Contractor hereunder and give rise to a right of termination for cause.

6.SUBCONTRACTORS

6.1.DEFINITIONS

6.1.1.SUBCONTRACTOR

A Subcontractor is a person or entity which has a direct contract with Contractor to perform any portion of the Work at the Project site.

6.2.SUBCONTRACTING

6.2.1.WORK NOT CUSTOMARILY PERFORMED

Contractor shall not perform with its own forces portions of the Work which Contractor does not customarily so perform.

6.2.2.NOTICE OF SUBCONTRACTORS

Prior to the commencement of work at the Project site Contractor shall furnish to Owner and to Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. As soon as practicable thereafter, Owner shall notify Contractor in writing whether or not Owner, after due investigation, takes reasonable objection to any such proposed Contractor. If Owner fails to promptly notify Contractor of such an objection, there shall be no such reasonable objection.

6.2.3.OBJECTION BY OWNER

Once Owner has given Contractor written notice of Owner's reasonable objection, Contractor shall not subcontract to the person or entity to whom the objection has been made. However, Contractor shall not be required to contract with a person or entity to whom Contractor has a reasonable objection.

6.2.4.CONSEQUENCES OF OBJECTION TO SUBCONTRACTOR

If Contractor has relied upon the bid or proposal of a Subcontractor which Contractor, in good faith, believes is fully qualified to perform that portion of the Work and Owner takes reasonable objection to the Subcontractor upon whose bid or proposal Contractor has relied, then Contractor shall submit a substitute Subcontractor to whom Owner has no objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by the substitution and the appropriate Modification issued if the increase is accepted by Owner.

6.3.SUBCONTRACT DOCUMENTS

6.3.1.SUBCONTRACTS

Contractor shall employ each Subcontractor with a written subcontract document such that each Subcontractor is bound to Contractor by the terms of the Contract Documents and assumes toward Contractor all of the obligations and responsibilities which Contractor assumes toward Owner under the Agreement.

6.3.2.PROTECTION OF OWNER'S RIGHTS

Contractor's agreement with each of its Contractors shall preserve and protect the rights of Owner and Architect under the Contract Documents as to the portion of the Work assigned to each Contractor and the subcontracting of the portion of the Work shall not diminish the rights of Owner and Architect as to Contractor and those that Contractor has against Owner.

6.3.3.CONTRACTOR OBLIGATION

Subcontracting shall in no way lessen or affect Contractor's obligations to Owner under the Contract Documents.

7.WORK DONE BY OWNER OR OTHERS

7.1.OWNER'S RIGHT TO PERFORM WORK AND ENGAGE OTHERS

7.1.1.OWNER'S RIGHTS

Work related to the Project may be performed by Owner's own forces or under separate contracts let by Owner.

7.1.2.NO GROUNDS FOR CLAIM

Any such performance by Owner or a separate contractor shall not, in and of itself, be grounds for a claim for delay or additional cost by Contractor. However, if Contractor is actually delayed by Owner or a separate contractor, then Contractor shall be entitled to an extension of time as provided for elsewhere in these General Conditions.

7.2.COOPERATION

7.2.1.COOPERATION IN THE WORK

Owner, Contractor and each separate contractor shall cooperate with one another in the use of the site, storage of their materials and equipment, and the execution of their work and shall connect and coordinate their work as required by the Contract Documents.

7.2.2.INSPECTION BY CONTRACTOR

Work which will be performed by Owner or any separate contractor and upon which Contractor depends for proper execution of its portion of the Work shall be inspected by Contractor promptly upon its completion and apparent discrepancies or defects in such other work shall be reported in writing to Owner.

7.2.3.TACIT ACCEPTANCE

If Contractor does not make such written report within a reasonable time after the completion of the work upon which Contractor's Work depends, except as to latent defects, this shall constitute Contractor's acceptance of such work done by Owner or a separate contractor.

7.2.4.COST OF CORRECTION

The cost of correcting any work which was not done properly and of which timely notice was given, shall be the responsibility of the party who performed such work.

7.2.5.AVOIDANCE OF DAMAGE

Owner, Contractor any Subcontractors and all separate contractors shall diligently endeavor not to damage the work of others. If any such damage takes place the damage shall be promptly corrected at the expense of the party causing the damage.

7.2.6.SETTLEMENT OF DISPUTES

If Contractor or any Subcontractor damages the work of a separate contractor then Contractor shall promptly settle the matter directly with the other contractor and shall hold Owner harmless from any and all effects of such damage.

7.2.7.CLEANUP OF SEPARATE WORK

Contractor is obligated to clean up the Work. Owner and separate contractors shall similarly clean up in the areas of their work. Owner reserves the right to clean up and charge the cost thereof to Contractors responsible if a dispute arises between Contractor and any separate contractors as to their responsibility for cleaning up.

8.SCHEDULE

8.1.DEFINITIONS

8.1.1.COMMENCEMENT

The Date of Commencement of the Work is the date established in the Notice to Proceed from Owner to Contractor. If no Notice to Proceed is issued, it shall mean the effective date of the Agreement or such other date as may be established therein.

8.1.2.SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so that Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

8.1.3.FINAL COMPLETION

The Date of Final Completion of the Work is the date certified by Owner when all work called for in the Contract Documents is complete and all other terms and conditions of the Contract Documents applicable to Contractor have been fulfilled.

8.1.4.DAY

The term "Day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2.PROGRESS AND COMPLETION

8.2.1.TIME OF THE ESSENCE

Time is of the essence of the Agreement for construction between Owner and Contractor.

8.2.2.START AND EXPEDITIOUS COMPLETION

Contractor shall begin the Work on the Date of Commencement, man the Project site with adequate forces and achieve Substantial Completion within the Project's schedule. Thereafter, Final Completion shall be achieved as expeditiously as possible.

8.3.FORCE MAJEURE AND EXTENSIONS OF TIME

8.3.1.FORCE MAJEURE

In the event that either Owner or Contractor shall be delayed or hindered in or prevented from performance of any act required herein by reason of unavoidable labor dispute, unavoidable inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fire, adverse weather conditions not reasonably anticipatable, other unavoidable casualties or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the Contract Documents, then performance of such acts shall be excused for the period of the delay and the period for the performance of any such acts shall be extended for an equivalent period.

8.3.2.DELAYS BY OWNER OR ARCHITECT

If Owner, the Architect, or any separate contractor employed by Owner delays Contractor this shall be considered an event of force majeure. However, in no event shall Contractor be entitled to any compensation for any force majeure delay other than the extension of the Project schedule described above.

8.3.3.CLAIMS FOR EXTENSIONS

Contractor's claims, if any, for extension of time must be made in writing to Owner not more than five working days after Contractor has notice of the delay. Thereafter, Contractor must provide full details and supporting documentation with regard to the cause of the delay within fifteen working days of the initial notice of the delay to Owner. If either the initial notice or the supporting documentation is not filed with Owner in writing within the time periods specified, the claim for delay shall be waived. If the cause for the delay is a continuing one then only one claim is necessary. Contractor's supporting documentation to Owner shall include an estimate of the probable effect of the delay on the progress of the Work and the Project schedule.

9.PAYMENTS

9.1.CONTRACT SUM

9.1.1.DEFINITION OF CONTRACT SUM

The Contract Sum, including authorized adjustments thereto, is the total (or maximum, as the case may be) amount payable by Owner to Contractor for the performance of the Work under the Contract Documents.

9.2.SCHEDULE OF VALUES

9.2.1.SCHEDULE OF VALUES

Before submitting its first Invoice to Owner, Contractor shall submit to Owner a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule of values, unless objected to by Owner, shall be used as the basis for Contractor's Invoices.

9.3.INVOICES

9.3.1.ITEMIZED INVOICE

In accordance with the Payments for Progress and Final Payments (as the case may be) Articles in the Agreement, Contractor shall submit to Owner an itemized Invoice, notarized if required, supported by such data substantiating Contractor's right to payment as Owner may require.

9.3.2.MATERIALS AT PROJECT SITE

Payments will be made on account of Materials or equipment not yet incorporated in the Work but delivered, suitably stored and protected at the Project site, if prior written approval has been given by Owner.

9.3.3.MATERIALS OFF-SITE

With the advance written approval of Owner payments will similarly be made for materials or equipment suitably stored, protected and identified for the Project at some other location. Payments for materials or equipment stored on or off the Project site shall only be made upon submission by Contractor of bills of sale or such other procedure satisfactory to Owner to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance, bonded warehouse storage and transportation to the Project site where those materials and equipment are stored off the Project site.

9.3.4.TRANSFER OF TITLE

Title of all Work, materials and equipment covered by an Invoice will pass to Owner either by incorporation in the construction or upon the receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances.

9.3.5.PAYMENT

After review of the Invoice, Owner shall make payment as set forth in the Agreement or, if Owner does not agree with the Invoice, it will promptly so notify Contractor in writing.

9.3.6.NO ACCEPTANCE

Owner's opinion as to amounts due Contractor, the approval of a progress payment, and actual progress payments made shall not constitute an acceptance of any work not in accordance with the Contract Documents.

9.4.PAYMENT TO SUBCONTRACTORS

9.4.1.PAYMENT TO SUBCONTRACTORS

Upon receipt of payment from Owner, Contractor shall promptly pay each Subcontractor (provided such Subcontractor has not been paid previously) out of the amount paid to Contractor on the account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, from payments to Contractor on account of such Subcontractor's work.

9.4.2.INFORMATION TO SUBCONTRACTORS

If requested, Owner may furnish to any Subcontractor information regarding the percentages of completion or the amounts invoiced for by Contractor and the amounts paid by Owner with relation to the work completed by such Contractor or Subcontractor. However, Owner shall not have any obligation to pay or see to the payment or use of any monies to any Contractor except as may otherwise be required by law.

9.5.WITHHOLDING APPROVAL OF INVOICES

9.5.1.WITHHOLDING OF PAYMENT

If, in the opinion of Owner, Contractor is not entitled to the payment of all or part of an Invoice, Owner may decline to make the payment.

9.5.2.NOTICE

If Owner decides to withhold payment, Owner shall promptly notify Contractor in writing. The notice shall include specific reasons for the withholding of payment.

9.5.3.CLAIMS

If Contractor and Owner cannot agree on a revised amount, Contractor may submit a claim in accordance with the Claim provisions of these General Conditions.

9.5.4.REVOCATION OF PRIOR APPROVAL

Owner may also nullify in whole or in part any prior approval on the basis of subsequently discovered evidence of defective work not remedied, probable third-party claims, failure of Contractor to pay its Contractors or others, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, Contractor damage to Owner or another contractor, reasonable evidence that the Work will not be completed within the Project Schedule, or persistent failure to carry out the Work in accordance with the Contract Documents. As soon as the above grounds are removed, payment may be made for the amounts withheld because of them.

9.6.SUBSTANTIAL COMPLETION

9.6.1.PUNCH LIST

As soon as Contractor considers that the Work, or a designated portion thereof which Owner has previously indicated Owner will accept, is substantially complete, Contractor shall prepare for submission to Owner a punch list of items to be completed or corrected.

9.6.2.CONTRACTOR RESPONSIBILITY

The failure to include any items on the punch list does not alter the responsibility of Contractor to complete all work in accordance with the Contract Documents.

9.6.3.INSPECTION

Owner shall then inspect the Work or designated portion thereof to determine if Substantial Completion, as defined in the Contract Documents, has been achieved and to verify the accuracy and completeness of the punch list.

9.6.4.CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which Contractor shall complete the items on the Punch List.

9.6.5.COPIES

Contractor shall receive a copy of the Certificate of Substantial Completion for Contractor's written acceptance of the responsibilities assigned to Contractor in such Certificate.

9.7.FINAL PAYMENT

9.7.1.FINAL INVOICE

When Contractor believes that the Work is ready for final inspection and acceptance, Contractor shall prepare the final Invoice and send it to Owner along with Contractor's statement that, in its opinion, the Work is complete.

9.7.2.INSPECTION

Owner and Contractor will promptly make an inspection, and if Owner finds the Work acceptable under the Contract Documents and all the terms and conditions of the Contract Documents have been fulfilled, the date of such inspection shall be the date of Final Completion.

9.7.3.DOCUMENTATION

Prior to Payment Neither the Final Payment, nor payment of any remaining retained percentage shall be made to Contractor until it submits to Owner:

(1)an affidavit that all payrolls, bills for materials and equipment, all charges by Contractors and Subcontractors and other indebtedness connected with the Work for which Owner and its property might in any way be responsible, have been paid or otherwise satisfied;

(2)consent to final payment by Contractor's surety, if required; and

(3)all other data required by Owner establishing payment or satisfaction of all such obligations, including but not limited to, receipts, releases, and waivers of lien arising out of the Agreement.

9.7.4.LIEN BONDS

Contractor may furnish a bond satisfactory to Owner to indemnify Owner against any potential Lien if a Contractor refuses to furnish a release or waiver required by Owner.

9.7.5.REFUND FOR DISCHARGE OF LIEN

Contractor shall refund to Owner all monies that Owner may be compelled to pay in discharging a Lien, including all costs and reasonable attorneys' fees, if any such lien remains unsatisfied after all payments are made.

9.8.NO WAIVER

9.8.1.NO WAIVER BY PAYMENT

It is mutually agreed that no payment (including final payment) under the Contract Documents shall be evidence of the performance by Contractor under the Agreement, either wholly or in part.

9.8.2.NO WAIVER BY USE

Neither the partial nor the entire use or occupancy of the Project by Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.8.3.NO WAIVER BY INSPECTION

Neither inspection by Owner's Representative or Architect, or by any of their duly authorized representatives; nor any order, measurement or certificate by Owner's Representative or Architect shall constitute a waiver of any of Owner's rights under this Agreement.

9.8.4.NO SUBSEQUENT WAIVER

Any waiver by Owner of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach, and any waiver by Owner of any right to terminate the Agreement shall not be held to be a waiver of any breach of the Contract Documents, Owner retains all of its rights to recover damages therefor.

9.8.5.WAIVER BY CONTRACTOR

The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor except those previously made in writing, in accordance with the Contract Documents and identified by Contractor in writing as unsettled at the time of the final Invoice.

10.SAFETY AND SECURITY

10.1.SAFETY PROGRAMS

10.1.1.CONTRACTOR RESPONSIBILITY

Contractor shall be responsible for developing, implementing, maintaining and supervising all safety programs in connection with the Work and the Project site in the Complete satisfaction of Owner's Project Manager. Contractor shall be responsible for taking all reasonable safety precautions to prevent injury or death to persons or damage to property. These obligations extend to the protection of all employees on the Work and all other persons who may be affected by the Work in any way.

10.1.2.SAFETY OFFICER

A responsible member of Contractor's organization shall be designated in writing as Contractor's safety officer. This person's duties shall include compliance with this Article and, if this person is not the Contractor's Superintendent, then this person shall report directly to the Superintendent.

10.2.SAFETY OBLIGATIONS

10.2.1.SAFETY OF PROPERTY

Contractor shall be responsible for taking all reasonable precautions to prevent damage to property. Protection of property includes the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the site, under the care, custody or control of Contractor or any person or entity for whom Contractor is responsible. In addition, protection of property includes other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2.APPLICABLE SAFETY LAWS

Contractor shall ascertain and comply with all requirements to give notices and shall comply with all applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3.REQUIRED SAFEGUARDS

Contractor shall ascertain the requirements for and shall erect and maintain, as required by law and/or existing conditions, all reasonable safeguards for safety and protection, including but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent property.

10.2.4.HAZARDOUS ACTIVITIES

If the Work involves any hazardous activities or the use or storage of explosives or other hazardous materials or equipment, Contractor and any Contractors shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified and licensed personnel.

10.2.5.REMEDY OF DAMAGES

Any and all damage or loss to any property caused in whole or in part by Contractor or any person or entity for whose performance Contractor is responsible shall be promptly remedied at the expense of Contractor.

10.3.EMERGENCIES

10.3.1.CONTRACTOR DISCRETION

With regard to any emergency endangering persons or property, Contractor shall act, at its discretion, to prevent or, at least, minimize the injury to persons or damage to property.

10.3.2.ADDITIONAL COMPENSATION

Additional compensation to Contractor or extension of time, if any, claimed on account of emergencies shall be determined as provided in the Article relating to Claims.

10.4.SECURITY

10.4.1.SECURED AREAS

Unless Contractor is otherwise notified in writing by Owner, all Owner property and premises are secured areas.

10.4.2.SECURITY REQUIREMENTS

Contractor shall abide by all security requirements communicated to Contractor in writing by Owner.

10.4.3.REMEDY

Contractor's failure to comply with these requirements in any way shall be grounds for termination for default.

11.CHANGES DURING CONSTRUCTION

11.1.CHANGE ORDERS

11.1.1.DEFINITION

A Change Order is a written order to Contractor signed by Owner authorizing a change in the Work and/or an adjustment in the Contract Sum and/or an adjustment in the Contract Schedule, and issued after execution of the Agreement.

11.1.2.SCOPE

No change in the Contract Sum or the Contract Schedule shall be effective unless a Change Order has been signed by Owner.

11.1.3.CONTRACTOR SIGNATURE

A Change Order signed by Contractor evidences Contractor's agreement with the Change Order including, but not limited to, any adjustment in the Contract Sum and/or the Contract Schedule included therein.

11.2.OWNER ORDERED CHANGES

11.2.1.OWNER ORDERED CHANGES

Without invalidating the Agreement, Owner may order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum and/or the Contract Schedule being adjusted accordingly, if necessary.

11.2.2.AUTHORIZATION FOR CHANGES

All such changes in the Work must be authorized by a Change Order and must be performed in accordance with the Contract Documents.

11.3.ADJUSTMENTS TO CONTRACT SUM

11.3.1.COST/CREDIT FOR CHANGES

Except where the basis of payment is cost of the Work, the cost or credit to Owner resulting from a change in the Work shall be determined in one or more of the following ways, as selected by Owner:

(1)by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

(2)by unit prices stated in the Contract Documents or subsequently agreed upon; or

(3)by costs determined as set forth below, plus a fee based upon the fee schedule set forth in the Contract Documents.

11.3.2.NONREIMBURSABLES

The following items are part of Contractor's overhead, shall not be reimbursed by Owner and are not subject to any markup for overhead and profit:

(1)salaries, expenses or other compensation of the Contractor's officers, executives, general managers, general superintendents, estimators, auditors, accountants, purchasing and contracting agents, expediters and other employees working in or out of Contractor's permanent offices;

(2)project superintendent's salary, other field office personnel salaries, utilities and telephone, temporary toilet facilities, trash removal and similar services, and safety equipment;

(3)general and administrative expenses of Contractor's business, including the cost of insurance as requested by the Contract Documents;

(4)contractor's capital expenses including interest on Contractor's capital employed for the Work;

(5)costs due to the negligence of Contractor, any Contractor, 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;

(6)use of Contractor's equipment such as office and material trailers and shacks, pickup trucks, automobiles, etc.;

(7)costs in excess of the guaranteed maximum, if applicable;

(8)small tools and consumables which include hand and power tools normally in a field gang box for each trade employed on the job; and

(9)drayage services performed by Contractor's office personnel.

11.3.3.REIMBURSABLES AT COST

The following items shall be reimbursed at cost and shall not be subject to any percentage markup for overhead and profit:

(1)premium time wages;

(2)sales and use taxes;

(3)performance and labor and material payment bond premiums;

(4)permit fees; and

(5)insurance premiums other than those described in the preceding Subparagraph.

(6)In cases where the Project has been delayed through the sole cause of Owner, such increases in costs of the items referred to in subsections (1), (2), (3), and (4) of the preceding subparagraph which are apportioned to the Project on a pro rata basis and which are directly connected to the delay.

11.3.4.REIMBURSABLE FIELD COSTS WITH MARKUP

The following direct field costs shall be reimbursed at cost and are subject to a 10 percent markup for overhead and profit:

(1)straight time wages for apprentices, journeymen, subjourneymen, foremen and general foremen;

(2)fringe benefits based on payroll;

(3)payroll insurance;

(4)payroll taxes up to the maximum annual amount for each employee; and

(5)travel and subsistence paid in accordance with union agreement.

11.3.5.REIMBURSABLE MATERIAL AND SERVICES WITH MARKUP

The following purchased materials and services shall be reimbursed at cost and are subject to a 10 percent markup for overhead and profit:

(1)materials and equipment incorporated in the Work;

(2)subcontracts, where properly identified and supported by sufficiently itemized substantiating data to permit evaluation; and

(3)rental charges of all necessary machinery and equipment rented by Contractor, Contractor, or Subcontractor, exclusive of hand tools, shall be consistent with those that can be negotiated in the area. Rental rates to be charged are to be approved by Owner prior to the commencement of work; total rental cost of any piece of equipment shall not exceed its fair market value at the time such equipment is rented.

11.4.UNIT PRICES

11.4.1.ADJUSTMENTS

If unit prices are stated in the Contract Documents or are otherwise agreed to between Owner and Contractor, and if the quantities originally contemplated are so greatly different from those included in a Change Order that the application of the previously agreed upon unit prices to the quantities of work proposed will cause substantial inequity to either Owner or Contractor, then the applicable unit prices shall be equitably adjusted.

11.5.CONCEALED CONDITIONS

11.5.1.ADJUSTMENT OF CONTRACT SUM

If in the performance of the Work, Contractor encounters concealed conditions it believes are at variance with the conditions indicated in the Contract Documents or if Contractor encounters unknown physical conditions of an unusual nature which differ materially from those depicted in the Contract Document, the Contract Sum may be equitably adjusted by Change Order upon claim by either party made in writing in accordance with these General Conditions.

12.QUALITY CONTROL

12.1.STANDARDS OF QUALITY

12.1.1.ESTABLISHMENT OF STANDARDS

Before Contractor's Work begins, standards of workmanship quality shall be established to the satisfaction of Owner's Project Manager.

12.2.THIRD-PARTY INSPECTIONS

12.2.1.NOTICE

Contractor is responsible for timely notice to Owner with regard to the performance of any inspection, test or approval required in the Contract Documents or applicable Laws.

12.2.2.OWNER OPPORTUNITY TO OBSERVE

Contractor shall provide Owner the opportunity to observe any inspections, tests or approvals. Owner shall cooperate with Contractor in observing inspections, tests or approvals and shall endeavor not to delay Contractor in this regard.

12.2.3.COST OF INSPECTION

The cost of all inspections, tests or approvals required by the Contract Documents or public authorities shall be borne by Contractor. The cost of all other inspections, tests or approvals shall be borne by Owner except as provided in the paragraph below.

12.2.4.SPECIAL INSPECTIONS

If in the reasonable opinion of Owner any Work requires special inspection, testing or approval not mentioned in the Contract Documents, Owner shall in writing instruct Contractor to order such special inspection, testing or approval and Contractor shall give notices provided above. If such special inspection or testing indicates that the Work inspected does not comply with the requirements of the Contract Documents, Contractor shall bear all costs thereof, including the cost of the testing and the cost to repair or replace the Work. If such special inspection or testing does not reveal a failure of the Work to comply with the Contract Documents then Owner shall bear such costs and an appropriate Change Order shall be issued.

12.2.5.CERTIFICATES OF INSPECTION

All required certificates of inspection, testing or approval shall be obtained by Contractor and promptly delivered to Owner.

12.3.UNCOVERING OF WORK

12.3.1.REQUIRED UNCOVERING

If Contractor or any contractor covers any Work which Owner requested the opportunity to inspect or covers it contrary to the Contract Documents, if required in writing by Owner, Contractor shall uncover this Work for Owner's inspection and all costs of such uncovering and covering after inspection shall be borne by Contractor.

12.3.2.OWNER-DIRECTED UNCOVERING

Owner may request that Contractor uncover any portion of the Work that Owner had not specifically requested to observe prior to being covered. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and covering it after inspection shall be charged to Owner and the appropriate Change Order issued. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay the cost of uncovering and covering such Work after inspection.

12.4.CORRECTING DEFECTIVE WORK

12.4.1.CORRECTION

All Work rejected by Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not then fabricated, installed or completed shall be promptly corrected by Contractor.

12.4.2.COST OF CORRECTION

Contractor shall be responsible for all costs of correcting such defective and nonconforming Work, including but not limited to the compensation for any of the Architect's additional services made necessary thereby.

12.4.3.FAILURE TO CORRECT

If Contractor fails to correct defective or nonconforming work, Owner may correct it at the expense of Contractor. In addition, if Contractor does not proceed with the correction of defective or nonconforming work within a reasonable period of time, Owner may remove it and store it at the expense of Contractor. If Contractor fails to pay the cost of such removal and storage within ten days of written notice from Owner, Owner may sell the Work by any means it chooses and, after satisfying its expenses incurred therein, shall pay the balance remaining, if any, to Contractor. If the proceeds of such a sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor.

12.4.4.NOTICE OF DEFECTS

Owner shall give notice of defects or deviations hereunder promptly after discovery of the condition.

12.4.5.NO LIMITATIONS

Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents or under applicable Law.

12.5.ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

12.5.1.ACCEPTANCE BY OWNER

At Owner's sole option Owner may accept defective or nonconforming work. Owner may do so instead of requiring the removal and correction of such work, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by Contractor to Owner.

13.CLAIMS

13.1.GENERAL

13.1.1.NOTICE OF CLAIM

In accordance with the Contract Documents, Contractor may make a claim for increase in the Contract Sum if it has valid grounds therefor and Contractor shall give Owner written notice thereof within five working days after the occurrence giving rise to such a claim.

13.1.2.TIME OF NOTICE

The notice of claim shall be given by Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case Contractor shall proceed in accordance with the emergency provisions of these General Conditions.

13.1.3.DETAILS OF CLAIMS

The full and complete details of the claim (sufficient for Owner to determine the validity and value of the claim, if any), its causes and all supporting data shall be given to Owner in writing within fifteen working days of the occurrence giving rise to the claim.

13.1.4.WAIVER OF CLAIM

No claim shall be valid unless made in accordance with this Article and Contractor waives all claims not made in accordance with these General Conditions.

13.1.5.REQUIREMENT OF CHANGE ORDER

Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

14.DISPUTES

14.1.RESOLUTION OF DISPUTES

14.1.1.INITIAL NEGOTIATIONS

In the event a dispute between Owner and Contractor arises under the Agreement or performance thereunder, the matter shall be resolved by negotiation between Owner's Project Manager and Contractor's Project Manager.

14.1.2.FINAL NEGOTIATIONS

If these people are unable to resolve the matter, it shall be referred to negotiation between the General Manager of Owner unit involved and the Chief Executive Officer of Contractor.

14.1.3.RESERVATION OF REMEDIES

Contractor and Owner both reserve all rights and remedies available under the law.

15.SUSPENSION OF THE WORK

15.1.OWNER ORDERED SUSPENSION

15.1.1.OWNER CONVENIENCE

Owner may order Contractor, in writing, to suspend all or any part of its Work hereunder for such period of time as Owner may determine to be appropriate for its convenience.

15.1.2.ADJUSTMENT OF COST

If the performance of all or any part of the Work is suspended by Owner for an unreasonable period of time, an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such suspension, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this Subparagraph for any suspension to the extent that performance would have been suspended by any other cause, including the fault or negligence of Contractor.

16.TERMINATION

16.1.TERMINATION BY OWNER

16.1.1.OWNER RIGHTS

Owner may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, for convenience or because of the failure of Contractor to fulfill its contractual obligations.

16.1.2.CONTRACTOR OBLIGATIONS

Upon receipt of a notice of termination pursuant to this Subparagraph, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to Owner copies of all data, Drawings, Specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Work whether completed or in process.

16.1.3.ASSIGNMENT OF CONTRACTS

If this Agreement is terminated Contractor shall assign to Owner all purchase orders, subcontracts and agreements requested by Owner. In addition, Contractor shall turn over to Owner all work in progress and materials.

16.1.4.ADJUSTMENT OF COMPENSATION

If the termination is for the convenience of Owner, an equitable adjustment in the compensation of Contractor shall be made, but no amount shall be allowed for anticipated profit, unperformed services or intangibles.

16.1.5.LIABILITY OF CONTRACTOR FOR TERMINATION FOR BREACH

If the termination is due to the failure of Contractor to fulfill its contractual obligations, Owner may take over the Work and prosecute the same to completion by contract or otherwise and Owner shall be compensated by Contractor for any losses or costs Owner incurs by virtue of this termination for failure to perform.

EXHIBIT J

WAIVER OF LIEN RIGHTS

The undersigned hereby forever waives and releases any and all types and forms of contractors', mechanics', and materialmen's liens and other liens with respect to that certain construction project (the "Project") which is being constructed by \_\_\_\_\_\_\_\_\_\_\_\_ ("Contractor"), under the Agreement for Final Design and Construction Services Including a Guaranteed Maximum Cost (Design/Build) dated \_\_\_\_\_\_\_, 20\_\_\_, between Contractor and \_\_\_\_\_\_\_\_\_\_\_ and any additional improvements or alterations to the Project, and the Land, as hereinafter defined, whether such liens or rights of liens are now existing or may hereafter arise for any labor or services performed or materials furnished with respect to the Project or improvements or alterations. As used herein, the term "Land" shall mean any or all of that real property presently owned by \_\_\_\_\_\_\_\_\_\_\_, and located in \_\_\_\_\_\_\_\_\_\_\_\_.

Should any claim of lien be filed on the real property records of \_\_\_\_\_\_\_\_\_\_ by the undersigned contrary to the terms of this Waiver of Lien, it is hereby agreed by the undersigned that such claim of lien shall be dissolved as a matter of record by the recordation of this Waiver of Lien.

By executing this Waiver of Lien, the undersigned hereby binds its representatives, heirs and assigns or its successors and assigns, as the case may be.

IN WITNESS WHEREOF, the undersigned has caused this Waiver of Lien to be executed this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

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

(Company Name)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

EXHIBIT K

BONDS PERFORMANCE AND LABOR/MATERIAL

PAYMENT BOND REQUIREMENTS

Contractor shall obtain a Performance and Labor and Material Payment Bond which shall be submitted in duplicate at the time this Agreement is executed.

All bonds shall be made out in favor of Owner. (Subcontractor bonds shall be made out in favor of the Contractor with Owner named as a dual obligee.)

The Performance Bond shall be made out for an amount equal to 100 percent of the firm fixed construction price. The Labor/Material Payment Bond shall be made out for an amount equal to 100 percent of the firm fixed construction price.

All bonds shall remain in effect until all obligations under the Agreement have been completed.

Bonds shall be written in the form of AIA Document A3 11, and the attorney-in-fact who executes the bonds shall affix thereto an original, certified and current copy of his/her Power of Attorney.

All bonds, in the form stated above, shall be with a surety acceptable to Owner and licensed to do business in the state where the Project is located.