

ATTACHMENT A

GENERAL CONDITIONS
FOR
STATE ASSISTED WATER PROJECTS
UNDER
SECTION 403.8532, FLORIDA STATUTES

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1. Acceptance: By the OWNER of the Work as being fully complete in accordance with the Contract Documents.
2. Agreement: The written agreement between the OWNER and the CONTRACTOR covering the Work to be performed; the Contract Documents are attached to and made a part of the Agreement. Also designated as the Contract.
3. Addenda: Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, Drawings and Specifications, by addition, deletions, clarifications or corrections.
4. Application for Payment: The form furnished by the ENGINEER which is to be used by the CONTRACTOR in requesting progress payments and an affidavit of the CONTRACTOR that progress payments theretofore received from the OWNER on account of the Work have been applied by the CONTRACTOR to discharge in full all of the CONTRACTOR'S obligations stated in prior Applications for Payment.
5. Approval: Accept as satisfactory.
6. Bid: The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
7. Bidder: Any person, firm or corporation submitting a Bid for the Work.
8. Bonds: Bid, performance and payment bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the Contract Documents and in accordance with the law of the location of the project.
9. Change Order: A written order to the CONTRACTOR signed by the OWNER authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.
10. Contract Documents: Advertisement for Bids, Information for Bidders, the Bid, the Bonds, the Agreement, the Notice of Award, the Notice to Proceed, the Change Order, these General Conditions, the Florida Department of Environmental Protection Supplementary Conditions, and the Technical Specifications.
11. Contract Price: The total moneys payable to the CONTRACTOR under the Contract Documents.

12. Contract Time: The number of calendar days stated in the Agreement for the completion of the Work.
13. Contracting Officer: The OWNER or the Individual who is authorized to sign the Contract Documents on behalf of the owner's governing body.
14. Contractor: The person, firm or corporation with whom the OWNER has executed the Agreement.
15. Day: A calendar day of twenty-four (24) hours measured from midnight to the next midnight.
16. Drawings: The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the ENGINEER and referred to in the Contract Documents.
17. Engineer: The person, firm or corporation named as such in the Contract Documents.
18. Field Order: A written order issued by the ENGINEER which clarifies or interprets the Contract Documents in accordance with paragraph 9.3 or orders minor changes in the Work in accordance with paragraph 10.2.
19. Modification: (a) A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by the ENGINEER in accordance with paragraph 9.3 or (d) a written order for a minor change or alteration in the Work issued by the ENGINEER pursuant to paragraph 10.2. A modification may only be issued after the execution of the Agreement.
20. Notice of Award: The written notice by the OWNER to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, OWNER will execute and deliver the Agreement to him.
21. Notice to Proceed: A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.
22. Owner: A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.
23. Project: The entire construction to be performed as provided in the Contract Documents.
24. Resident Project Representative: An authorized representative of the ENGINEER assigned to observe the Work performed and materials furnished by the CONTRACTOR or such other person as may be appointed by the OWNER as his representative. The CONTRACTOR shall be notified in writing of the identity of this representative.
25. Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a Subcontractor, manufacturer, supplier or

distributor and which illustrate the equipment, material or some portion of the Work and as required by the Contract Documents.

26. Samples: Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
27. Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work.
28. Subcontractor: An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Project site.
29. Substantial Completion: The stage in construction when a Project can be utilized for the purposes for which it was intended. At substantial completion, minor items and items that are seasonally restricted need not be completed, but the items that affect operational integrity and function of the facility must be capable of continuous use.
30. Supplementary Conditions: FDEP Supplementary Conditions in effect at time of submission of Bid.
31. Supplier: Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
32. Surety: The corporate body that is bound with the CONTRACTOR and which engages to be responsible for the CONTRACTOR and his acceptable performance of the Work.
33. Work: Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by CONTRACTOR under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.
34. Written Notice: The term "Notice" as used herein shall mean and include all written notices, demands, instructions, claims, approvals, and disapproval required to obtain compliance with Contract requirements. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative of such individual, firm or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice. Unless otherwise stated in writing, any notice to or demand upon the OWNER under this Contract shall be delivered to the OWNER through the ENGINEER.

ARTICLE 2 – PRELIMINARY MATTERS

2.1 Award:

The award of the Contract, if it is awarded, will be to the lowest responsible, responsive Bidder. No Notice of Award will be given until the OWNER has concluded such investigations as he deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to do the Work in accordance with the Contract Documents to the satisfaction of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER'S satisfaction. In analyzing Bids, the OWNER may take into consideration alternates and unit prices, if requested by the Bid forms. If the Contract is awarded, the OWNER will issue the Notice of Award and give the successful Bidder a contract for execution within sixty (60) days after the opening of Bids.

2.2 Execution of Agreement:

At least three (3) counterparts of the Agreement and such other Contract Documents will be executed and delivered by CONTRACTOR to the OWNER within ten (10) working days or fifteen (15) calendar days of receipt from the OWNER.

2.3 Forfeiture of Bid Security:

Failure of the successful Bidder to execute and deliver the Agreement and deliver the required Bonds as stipulated in paragraph 2.2 shall be just cause for the OWNER to annul the Notice of Award and declare the Bid and any security therefore forfeited.

2.4 Contractor's Pre-Start Representations:

CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that he has correlated his study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.

2.5 Commencement of Contract Time:

The Contract Time will commence to run no less than the fifteen (15) days after receipt by the CONTRACTOR of the Notice to Proceed.

2.6 Starting the Project:

CONTRACTOR shall start to perform his obligations under the Contract Documents on the date when the Contract Time commences to run. No Work shall be done at the site prior to

the date on which the Contract Time commences to run, except with the written consent of the OWNER.

2.7 Before Starting Construction:

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to ENGINEER any conflict, error or discrepancy which he may discover; however, he shall not be liable to OWNER or ENGINEER for his failure to discover any conflict, error or discrepancy in the Drawings or Specifications.

2.8 Schedule of Completion:

Within ten (10) days after delivery of the Notice to Proceed by OWNER to CONTRACTOR, CONTRACTOR shall submit to ENGINEER an estimated progress schedule with earnings indicating the starting and completion dates of the various stages of the Work, and a preliminary schedule of Shop Drawing submissions. See paragraphs 6.12(a) through 6.12(e). The ENGINEER shall review and return this schedule or require revisions thereto within fourteen (14) days of its submittal. If there is more than one CONTRACTOR involved in the Project, the responsibility for coordinating the Work of all CONTRACTORS shall be as provided in the Contract Documents.

Within twenty (20) days after delivery of the executed Agreement by OWNER to CONTRACTOR, but before starting the Work at the site, a pre-construction conference will be held to review the above schedule, to establish procedures for handling Shop Drawings and other submissions and for processing Applications for Payment, and to establish a working understanding between the parties as to the Project. Present at the conference will be the OWNER or his representative, ENGINEER, Resident Project Representatives, CONTRACTOR and his Superintendent.

2.9 Qualification of Subcontractors, Materialmen and Suppliers:

Within ten (10) working days after bid opening, the CONTRACTOR will (if required) submit to the OWNER and the ENGINEER for acceptance a list of the names of Subcontractors and such other persons and organizations (including those who are to furnish principal items of materials or equipment) proposed for those portions of the Work as to which the identity of the Subcontractors and other persons and organizations must be submitted as specified in the Contract Documents. Within thirty (30) working days after receiving the list, the ENGINEER will notify the CONTRACTOR in writing if either the OWNER or the ENGINEER, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The failure of the OWNER or the ENGINEER to make objection to any Subcontractor, person or organization on the list within thirty (30) days of receipt shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the OWNER or the ENGINEER to reject defective Work,

material or equipment, or Work, material or equipment not in conformance with the requirements of the Contract Documents.

ARTICLE 3 – CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

3.1 Intent:

It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the OWNER and the CONTRACTOR. They may be altered only by a Modification.

3.2 Contract Documents:

The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall call it to ENGINEER'S attention in writing at once and before proceeding with the Work affected thereby; however, he shall not be liable to OWNER or ENGINEER for his failure to discover any conflict, error or discrepancy in the Specifications or Drawings. The various Contract Documents shall be given precedence, in case of conflict, error or discrepancy, as follows: Supplementary Conditions, Agreement Modifications, Addenda, Instructions to Bidders, General Conditions, Technical Specifications and Drawings. If the requirements of other Contract Documents are more stringent than of the Supplementary Conditions, the more stringent requirements shall apply.

3.3 Interpretation:

The words “furnish”, “furnish and install”, “install”, and “provide” or words with similar meaning shall be interpreted, unless otherwise specifically stated, to mean “furnish and install complete in place and ready for service”.

3.4 Miscellaneous Items and Accessories:

Miscellaneous items and accessories which are not specifically mentioned, but which are essential to produce a complete and properly operating installation, or usable structure or plant, providing the indicated function, shall be furnished and installed without change in the Contract Price. Such miscellaneous items and accessories shall be of the same quality standards, including material, style, finish, strength, class, weight and other applicable characteristics, as specified for the major component of which the miscellaneous items or accessory is and essential part, and shall be approved by the ENGINEER before installation. The above requirement is not intended to include major components not covered by or inferable from the Drawings and Specifications.

3.5 Work Coordination:

The Work of all trades under this Contract shall be coordinated by the CONTRACTOR in such a manner as to obtain the best workmanship possible for the entire Project, and all components of the Work shall be installed or erected in accordance with the best practices of the particular trade.

3.6 Manufacturer's Literature:

Manufacturer's literature, when referenced, shall be dated and numbered and is intended to establish the minimum requirements acceptable. Whenever reference is given to codes, or standard specifications or other data published by regulating agencies or accepted organizations, including but not limited to National Electrical Code, applicable State Building Code, Federal Specifications, ASTM Specifications, various institute specifications, and the like, it shall be understood that such reference is to the latest edition including addenda in effect on the date of Bid.

3.7 Brand Names:

Brand names where used in the technical specifications, are intended to denote the standard of quality and performance required of the particular material or product. The term "equal" or "equivalent", when used in connection with brand names, shall be interpreted to mean a material or product that is similar and equal in type, quality, size, capacity, composition, finish, color and other applicable characteristics to the material or product specified by trade name, and that is suitable for the same use and capable of performing the same function, in the opinion of the ENGINEER, as the material or product so specified. The ENGINEER must approve proposed equal items before they are purchased or incorporated in the Work.

ARTICLE 4 – AVAILABILITY OF LANDS; REFERENCE POINTS & SUBSURFACE TEST;
SUBSURFACE CONDITIONS

4.1 Availability of Lands:

The OWNER will furnish, as indicated in the Contract Documents, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the OWNER, unless otherwise specified in the Contract Documents. Other access to such lands or rights-of-way for the CONTRACTOR'S convenience shall be the responsibility of the CONTRACTOR. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Reference Points and Subsurface Tests:

The OWNER will, upon request, furnish to the BIDDERS copies of all available boundary surveys and subsurface tests at no additional cost.

4.3 Subsurface Conditions:

The CONTRACTOR acknowledges that he has investigated prior to bidding and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The CONTRACTOR further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done on behalf of the OWNER on the site or any contiguous site, as well as information presented by the Drawings and Specifications made a part of this Contract, or any other information made available to him prior to receipt of Bids. Any failure by the CONTRACTOR to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The OWNER assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR on the basis of the information made available by the OWNER.

4.4 Differing Site Conditions:

- (a) The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the OWNER in writing of: (i) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (ii) unknown physical conditions at the site, or an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The OWNER shall promptly investigate the conditions, and if he finds that such

conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- (b) No claim of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the OWNER.
- (c) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

ARTICLE 5 – BONDS AND INSURANCE

5.1 Performance and Payment Bonds:

The CONTRACTOR'S attention is directed to the requirement for the CONTRACTOR to furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR obligations under these Contract Documents.

5.2 Contractor's Liability Insurance:

- (a) The CONTRACTOR shall provide the OWNER with copies of insurance certificates certifying that all required insurance is in force; and such insurance certificates shall include provisions that the insurance shall not be cancelled, allowed to expire or be materially changed without giving the OWNER advance notice by registered mail.
- (b) The CONTRACTOR agrees that if any part of the Work under the Contract is sublet, he will require the Subcontractor(s) to carry insurance as required, and that he will require the Subcontractor(s) to furnish to him insurance certificates similar to those required by the OWNER in 5.1, above.

5.3 Fire and Extended Coverage Insurance (Builders' Risk):

- (a) The CONTRACTOR shall maintain Insurance, in an insurance company or insurance companies acceptable to the OWNER, for Fire, Extended Coverage and Vandalism & Malicious Mischief on buildings and structures, while in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said buildings or structures. The policy or policies shall also cover machinery, if the cost of machinery is included in the Contract. The amount of insurance must at all times be at least equal to the actual cash value of the insured property. The interests may appear, and shall also cover the interests of all Subcontractors performing work.
- (b) The CONTRACTOR shall provide the OWNER with satisfactory evidence certifying that the foregoing insurance is in force; and such evidence shall include provisions that the insurance shall not be cancelled, allowed to expire or be materially changed without giving the OWNER advance notice by registered mail.

5.4 Cancellation and Re-Insurance:

If any insurance should be cancelled or changed by the insurance company or should any insurance expire during the period of this Contract, the CONTRACTOR shall be responsible for securing other acceptable insurance to provide the coverage specified in this section to maintain continuous coverage during the life of this Contract.

5.5 Owner's Liability and Property Insurance:

In addition to the insurance required to be provided by CONTRACTOR under paragraphs 5.2 and 5.3, OWNER, at OWNER'S option, may purchase and maintain, at OWNER'S expense, OWNER'S own liability and property insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.1 Supervision and Superintendence:

The CONTRACTOR will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR’S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work. (Copies of written communications given to the Superintendent shall be mailed to the CONTRACTOR’S home office.)

6.2 Labor, Materials and Equipment:

- (a) The CONTRACTOR will provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order at the site.
- (b) The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, local telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- (c) All materials and equipment will be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the site in their original packages or container with seals unbroken and labels intact.
- (d) All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

6.3 Materials, Equipment, Products, and Substitutions:

Materials, equipment and products incorporated in the Work must be approved for use before being purchased by the CONTRACTOR. The CONTRACTOR shall submit to the ENGINEER a list of proposed materials, equipment or products, together with such samples as may be necessary of him to determine their acceptability and obtain his approval within ninety (90) calendar days after Award of Contract unless otherwise stipulated in the Contract Documents. No request for payment for “or equal” equipment will be approved until this list has been received and approved by the ENGINEER.

- (a) Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient

requirements and that other products of equal capacities, quality and function shall be considered per 40 CFR 33.255(c) as referenced in Chapter 62-552, FAC. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents be reference to brand name or catalog number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the Contract Price or Contract Time.

- (b) No substitute shall be ordered or installed without the written approval of the ENGINEER who shall be the judge of equality.
- (c) Delay caused by obtaining approvals for substitute materials will not be considered justifiable grounds for an extension of construction time.
- (d) Should any work or materials, equipment or products not conform with requirements of the Drawings and Specifications or become damaged during the progress of the Work, such Work or materials shall be removed and replaced, together with any work disarranged by such alteration, at any time before completion and acceptance of the Project. All such work shall be done at the expense of the CONTRACTOR. See paragraph 7.10
- (e) No materials or supplies for the Work shall be purchased by the CONTRACTOR or by any Subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the Seller. The CONTRACTOR warrants that he has good title to all materials and supplies used by him in the Work.

6.4 Concerning Subcontractors:

- (a) The CONTRACTOR will not employ any Subcontractor, other person or organization of the types referred to in paragraph 2.9 (whether initially or as a substitute) against whom the OWNER or the ENGINEER may have reasonable objection, nor will the CONTRACTOR be required to employ any Subcontractor against whom he has reasonable objection. The CONTRACTOR will not make any substitution for any Subcontractor who has been accepted by the OWNER and the ENGINEER, unless the ENGINEER determines that there is good cause for doing so.
- (b) The CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any

Subcontractor or other person or organization, except as may otherwise be required by law. OWNER or ENGINEER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done in accordance with the schedule of values.

- (c) The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- (d) The CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER.
- (e) All Work performed for the CONTRACTOR by a Subcontractor shall be pursuant to an appropriate agreement between the CONTRACTOR and the Subcontractor.
- (f) The CONTRACTOR shall be responsible for the coordination of the trades, Subcontractors and materialmen engaged upon his Work.
 - (i) The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CONTRACTOR by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of Subcontractors, and to give the CONTRACTOR the same power in regards to terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provisions of the Contract Documents.
 - (ii) The OWNER or ENGINEER will not undertake to settle any differences between the CONTRACTOR and his Subcontractors or between Subcontractors.
 - (iii) If in the opinion of the ENGINEER, any Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, he shall be replaced if and when directed in writing.

6.5 Patent Fees and Royalties:

- (a) The CONTRACTOR will pay all license fees and royalties and assume all costs incident to the use of any invention, design, process or device that is the subject of patent rights or copyrights held by others. He will indemnify and hold harmless the OWNER and the ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.
- (b) The CONTRACTOR shall be responsible for determining the application of patent rights and royalties on materials, appliances, articles or systems prior to bidding. However, he shall not be responsible for such determination on systems that do not involve purchase by him of materials, appliances and articles.

6.6 Permits:

The CONTRACTOR will secure and pay for all construction permits and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of his Bid. When such charges are normally made by the OWNER and when so stated in the Contract Documents, there will be no charges to the CONTRACTOR. The OWNER shall assist the CONTRACTOR, when necessary, in obtaining such permits and licenses. The CONTRACTOR will also pay all public utility charges.

6.7 Laws and Regulations:

The CONTRACTOR will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he will give the ENGINEER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the ENGINEER, he will bear all costs arising therefrom; however, it shall not be his primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

6.8 Taxes:

Cost of all sales and other taxes for which the CONTRACTOR is liable under the Contract shall be included in the Contract Price stated by the CONTRACTOR.

6.9 Record Drawings:

The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the ENGINEER and to the State DEP and shall be delivered by him to the OWNER upon completion of the Project. It shall be used for this purpose only.

6.10 Safety and Protection:

- (a) The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:
 - (i) All employees on the Work and other persons who may be affected thereby,
 - (ii) All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and

(iii) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement on roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The CONTRACTOR will designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR'S superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER.

6.11 Emergencies:

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He will give the ENGINEER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the CONTRACTOR believes that additional work done by him is an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.

6.12 Shop Drawings and Samples:

- (a) After checking and verifying all field measurements, the CONTRACTOR will submit to the ENGINEER for review, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8) copies (or at the ENGINEER'S option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the ENGINEER to review the information as required.
- (b) The CONTRACTOR will also submit to the ENGINEER for review, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- (c) At the time of each submission, the CONTRACTOR will in writing call the ENGINEER'S attention to any deviations that the Shop Drawings and samples may have from the requirements of the Contract Documents.
- (d) The ENGINEER will review with reasonable promptness Shop Drawings and samples, but his review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The review of a separate item as such will not indicate review of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the

ENGINEER and will return the required number of corrected copies of Shop Drawings and resubmit new samples until the review is satisfactory to the ENGINEER. The CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the ENGINEER on previous submissions. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER and the ENGINEER that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

- (e) No work requiring a Shop Drawing or sample submission shall be commenced until the submission has been reviewed and approved by the ENGINEER. A copy of each Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.
- (f) The ENGINEER'S review of Shop Drawings or samples shall not relieve the CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless the CONTRACTOR has in writing called the ENGINEER'S attention to such deviation at the time of submission and the ENGINEER has given written approval to the specific deviation, nor shall any review by the ENGINEER relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

6.13 Cleaning Up:

- (a) Site:

The CONTRACTOR shall clean up behind the Work as much as is reasonably possible as the Work progresses. Upon completion of the Work, and before acceptance of and final payment for the Project by the OWNER, the CONTRACTOR shall remove all his surplus and discarded materials, excavated material and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall clean his portion of Work involved in any building under this Contract, so that no further cleaning by the OWNER is necessary prior to his occupancy; shall restore all property both public and private, which has been disturbed or damaged during the prosecution of the Work; and shall leave the whole in a neat and presentable condition.

- (b) Building:

Clean-up operations shall consistently be carried on the CONTRACTOR at all times to keep the premises free from accumulation of waste materials and rubbish. Upon completion of the Work, he shall remove all rubbish, tools, scaffolding, surplus materials, etc., from the building and shall leave his work "broom clean", or its equivalent, unless more exactly specified elsewhere in the Contract. The General

CONTRACTOR shall do the following special cleaning for all trades upon completion of the Work:

- (i) Remove putty stains and paint from walls and wash and polish all glass. Do not scratch or otherwise damage glass.
- (ii) Remove all marks, stains, fingerprints and other soil and dirt from painted, stained and decorated work.
- (iii) Remove all temporary protections and clean and polish floors.
- (iv) Clean and polish all hardware for all trades; this shall include removal of all stains, dust, dirt, paint, etc.

(c) General:

In case of dispute, the OWNER may remove the rubbish and charge the cost to the CONTRACTORS that are involved with the construction of the Project, as the ENGINEER shall determine to be just.

6.14 Public Convenience and Safety:

The CONTRACTOR shall, at all times, conduct the Work in such a manner as to ensure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. "Street Closed" signs shall be placed immediately adjacent to the Work, in a conspicuous position, at such locations as traffic demands. At any time that streets are required to closed, the CONTRACTOR shall notify law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

6.15 Sanitary Provisions:

The General CONTRACTOR shall furnish necessary toilet conveniences, secluded from public observation, for use of all personnel on the Work, whether or not in his employ. They shall be kept in a clean and sanitary condition and shall comply with the requirements and regulations of the Public Authorities having jurisdiction. He shall commit no public nuisance. Temporary sanitary facilities shall be removed upon completion of the Work and the premises shall be left clean.

6.16 Indemnification:

- (a) The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (i) is

attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself) including the loss of use resulting therefrom and (ii) is caused in whole or in part by any negligent act of omission of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

- (b) In any and all claims against the OWNER or the ENGINEER or any of their agents or employees, by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.16(a), above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (c) The obligations of the CONTRACTOR under paragraph 6.16(b), above, shall not extend to the liability of the ENGINEER'S negligent acts, errors or omissions or those of his employees or agents.

6.17 Responsibility for Connecting to Existing Work:

It shall be the express responsibility of the CONTRACTOR to connect his Work to each part of the existing work or of work previously installed as required by the Drawings and Specifications to provide a complete installation.

6.18 Work in Street, Highway and other Rights-of-Way:

Excavation, grading, fill, storm drainage, paving and any other construction or installations in rights-of-way of streets, highways, public carrier lines, utility lines (either aerial, surface or subsurface), etc., shall be done in accordance with requirements of the Contract Documents. The OWNER will be responsible for obtaining all permits necessary for the Work. Upon completion of the Work, CONTRACTOR shall present to ENGINEER certificates, in triplicate, from the proper authorities stating that the Work has been done in accordance with their requirements.

- (a) The OWNER will cooperate with the CONTRACTOR in obtaining action from any utilities or public authorities involved in the above requirements.
- (b) The ENGINEER shall be responsible for obtaining elevations of curbs and gutters, pavement, storm drainage structures, and other such items that must be established by governmental agencies as soon as grading operations have begun on the site. It is advisable that this data should be obtained sufficiently early in the construction period to prevent any adverse effect on the Project.
- (c) Any variation from the requirements of paragraph 6.18(b), above, shall be stated in the Contract Documents.

6.19 Cooperation with Governmental Agencies, Public Utilities, Etc.:

The OWNER shall be responsible for making all necessary arrangements with governmental agencies, public utilities, public carriers, service companies and corporation owning or controlling roadways, railways, water, sewer, gas, electrical, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported and protected, or the CONTRACTOR may relocate them if he so desires. The CONTRACTOR shall give all proper notices, shall comply with requirements of such parties in the performance of his Work, shall permit entrance of such parties on the Project in order that they may perform their necessary work, and shall pay all charges and fees made by such parties for this work.

- (a) The CONTRACTOR'S attention is called to the fact that there may be delays on the Project due to work to be done by governmental agencies, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.
- (b) The CONTRACTOR shall have made himself familiar with all codes, laws, ordinances and regulations which in any manner affect those engaged or employed in the Work, or materials and equipment used in or upon the Work, or in any way affect the conduct of the Work, and no plea of misunderstanding will be considered on account of his ignorance thereof.

6.20 Use of Premises:

CONTRACTOR shall confine his apparatus, storage of materials, and operations of his workmen to limits indicated by law, ordinances, permits, and directions of ENGINEER and OWNER, and shall not unnecessarily encumber any part of the site.

- (a) CONTRACTOR shall not overload or permit any part of any structure to be loaded with such weight as will endanger its safety, nor shall he subject any part of the Work to stresses or pressures that will endanger it.
- (b) CONTRACTOR shall enforce OWNER'S instructions in connection with signs, advertisements, fires and smoking.
- (c) CONTRACTOR shall arrange and cooperate with OWNER in routing and parking of automobiles of his employees, Subcontractors and other personnel, and in routing material delivery truck and other vehicles to the Project site.

6.21 Protection of Existing Property Improvements:

Any existing surface or subsurface improvements, such as pavements, curbs, sidewalks, pipes or utilities, footings, or structures (including portions thereof), trees and shrubbery, not indicated on the Drawings or noted in the Specifications as being removed or altered

shall be protected from damage during construction of the Project. Any such improvements damaged during construction of the Project shall be restored to a condition equal to that existing at time of Award of Contract.

6.22 Temporary HVAC:

The General CONTRACTOR shall provide heat, ventilation, air condition (HVAC), and fuel services as necessary to protect all work and materials within all habitable areas of permanent building construction. This is to ensure that all contracts are protected against injury from dampness, heat and cold until final acceptance of all work and materials for the Project, unless building is fully occupied by the OWNER prior to such acceptance. In which case, the OWNER shall assume all expenses of HVAC from date of full occupancy. In areas outside those covered above, each prime contractor shall be responsible for providing such temporary services as required to protect his work or shall make all necessary arrangements with the General CONTRACTOR for providing such temporary services. Unless otherwise specifically permitted by the Contract Documents, the permanent HVAC system shall not be used to provide temporary HVAC. CONTRACTOR'S proposed methods should be submitted for approval.

ARTICLE 7 – WORK BY OTHERS

- 7.1 The OWNER may perform additional work related to the Project by himself, or he may let others have direct contracts. Therefore, such contracts with others shall contain General Conditions similar to these. The General CONTRACTOR will afford the other contractors, who are parties to such direct contracts (or the OWNER, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work. The General CONTRACTOR shall properly connect and coordinate his Work with theirs.
- 7.2 If any part of the General CONTRACTOR'S work depends for proper execution or results upon the work of any such other CONTRACTOR (or the OWNER), the General CONTRACTOR will promptly report to the ENGINEER in writing any such work that hinder proper execution and results of his work.
- 7.3 The General CONTRACTOR will do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The General CONTRACTOR will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the ENGINEER and of the other CONTRACTORS whose work will be affected.
- 7.4 If the performance of additional work by other CONTRACTORS or the OWNER is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the General CONTRACTOR prior to starting any such additional work. If the General CONTRACTOR believes that the performance of such additional work by the OWNER or other involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.
- 7.5 Where practicable, the General CONTRACTOR shall build around the work of other separate contractors or shall leave chases, slots and holes as required to receive and to conceal within the general construction work, the work of such other separate contractors as directed by them. Where such chases, slots, etc., are impracticable, the work shall require specific approval of the ENGINEER.
- 7.6 Necessary chases, slots, and holes required by other CONTRACTOR, that were not cut or built by the General CONTRACTOR, shall be cut by the other CONTRACTOR that requires such alterations. However, before the other CONTRACTOR executes the work, he must obtain the approval of the General CONTRACTOR. The General CONTRACTOR shall do all patching and finishing of his Work where cut by other CONTRACTORS at the expense of such other CONTRACTORS.
- 7.7 Cooperation is required in the use of site facilities and in the detailed execution of the Work. Each CONTRACTOR shall coordinate his operations with those of the other CONTRACTORS for the best interest of the Work in order to prevent delay in the execution thereof.

- 7.8 Each CONTRACTOR shall keep himself informed of the progress of the work of other CONTRACTORS. Should lack of progress or defective workmanship on the part of other CONTRACTORS interfere with his operations, the CONTRACTOR affected shall notify the ENGINEER immediately. Lack of such notice to the ENGINEER will be construed as acceptance by the affected CONTRACTOR of the status of the work of other CONTRACTORS as being satisfactory for proper coordination of his own Work.
- 7.9 Each CONTRACTOR shall give notices of the progress of his work so as to allow other CONTRACTORS adequate opportunity to properly direct and coordinate their work. The General CONTRACTOR shall give notices of the progress of his Work so that work of other CONTRACTORS, when required to be concealed, may be placed before the general CONTRACTOR'S Work. All such notices shall be submitted to the ENGINEER with copies to other prime CONTRACTORS on the Project sufficiently ahead of the job progress schedule to permit adequate time for the other prime CONTRACTORS to coordinate their work.
- 7.10 The cost of extra work resulting from lack of notices, untimely notices, failure to respond to notices, defective work or lack of coordination shall be borne by the CONTRACTOR responsible for such lack of notices, etc.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

- 8.1 The OWNER will issue all communications to the CONTRACTOR through the ENGINEER.
- 8.2 In case of termination of the employment of the ENGINEER, the OWNER will appoint an engineer against whom the CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration, if mutually agreeable.
- 8.3 The OWNER will furnish the data required of him under the Contract Documents promptly and shall make payments to the CONTRACTOR promptly after they are due as provided in paragraph 14.3.
- 8.4 OWNER’S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1, 4.4, and the Contract Documents. Paragraph 4.2 refers to OWNER’S identifying and making available to CONTRACTOR copies of surveys and investigation reports of subsurface and latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by ENGINEER in preparing the Drawings and Specifications.
- 8.5 The OWNER’S responsibilities in respect of liability and property insurance are set forth in paragraph 5.5.
- 8.6 In addition to his rights to request changes in the Work in accordance with Article 10, the OWNER (especially in certain instances as provided in paragraph 10.4 will be obligated to execute Change Orders.
- 8.7 In connection with the OWNER’S right to stop Work or suspend Work, see paragraph 15.1. Paragraph 15.3 deals with the OWNER’S right to terminate services of the CONTRACTOR under certain circumstances.
- 8.8 The OWNER shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or any portion thereof may not have expired; but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the Work, the CONTRACTOR shall be entitled to such extra compensation or extension of time or both, except by prior agreement, as the ENGINEER may determine. See paragraph 14.4.
- 8.9 OWNER’S responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 9.5.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

9.1 OWNER’S Representative:

The ENGINEER shall be the OWNER’S representative during the construction period. The duties and responsibilities and the limitations of authority of the ENGINEER as the OWNER’S representative during construction are set forth in Articles 1 through 17 of these General Conditions and shall not be extended without written consent of the OWNER and the ENGINEER.

- (a) The ENGINEER’S decision, in matters relating to aesthetics, shall be final, if within the terms of the Contract Documents.
- (b) All claims, counter-claims, disputes, and other matters in question between the OWNER and the CONTRACTOR arising out of or relating to this Agreement or the breach thereof, will be decided by arbitration in a court within the State that has jurisdiction to the location of the Project, if the parties hereto mutually agree; except as may be otherwise provided in this Contract.

9.2 Visits to Site:

The ENGINEER will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. He will not be required to make continuous on-site observations to check the quality or quantity of the Work. His efforts will be directed toward ascertaining on behalf of the OWNER that the completed Project will conform to the requirements of the Contract Documents. On the basis of his on-site observations as an experienced and qualified design professional, he will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against defects and deficiencies in the Work of CONTRACTORS.

9.3 Clarifications and Interpretations:

The ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise), as he may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification and interpretation entitles him to an increase in the Contract Price or extension of Contract Time, he may make a claim, therefore, as provided in Articles 11 and 12.

9.4 Measurement of Quantities:

The ENGINEER, in accordance with the United States Standard Measures, will measure all Work completed under the Contract. All linear surface measurements will be made horizontally or vertically as required by the item measured.

9.5 Rejecting Defective Work:

The ENGINEER will have authority to disapprove or reject Work which is “defective” (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). He will also have authority to require special inspection or testing of the Work as provided in the Contract Documents, whether or not the Work is fabricated, installed or completed.

9.6 Shop Drawings, Change Orders, and Payments:

- (a) In connection with the ENGINEER’S responsibility as to Shop Drawings and samples, see paragraphs 6.12(d) through 6.12(f), inclusive.
- (b) In connection with the ENGINEER’S responsibility for Change Orders, see Articles 10, 11, 12, and FDEP Supplementary Conditions.
- (c) In connection with the ENGINEER’S responsibilities in respect of Application for Payment, etc., see Article 14.

9.7 Resident Project Representative:

The OWNER or the ENGINEER will provide on-site representation sufficient to guarantee that construction is in general compliance with the construction Drawings and the Contract Specifications.

9.8 Decisions on Disagreements:

- (a) The ENGINEER will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. In his capacity as interpreter and judge he will exercise his best efforts to ensure faithful performance by both the OWNER and the CONTRACTOR. He will not show partiality to either and shall not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the ENGINEER for decision; which he shall render in writing within a reasonable time.
- (b) Either the OWNER or the CONTRACTOR, if both agree, may request arbitration with respect to any such claim, dispute or other matter that has been referred to the ENGINEER, except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.4, such arbitration to be in accordance with Article 16. However, no request for arbitration of any such claim, dispute or other matter shall be made until the earlier of (i) the date on which the ENGINEER has rendered his decision or (ii) the tenth day after the parties have presented their evidence to the ENGINEER, if he has not rendered his written decision before that date. No request for arbitration shall be made later than thirty (30) after the date on

which the ENGINEER rendered his written decision in respect of the claim, dispute or other matter as to which arbitration is sought; and the failure to request arbitration within said thirty (30) days' period shall result in the ENGINEER'S decision being final and binding upon the OWNER and the CONTRACTOR. If the ENGINEER renders a decision after arbitration proceeding have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except when the decision is acceptable to the parties concerned.

9.9 Limitations on Engineer's Responsibilities:

- (a) Neither the ENGINEER'S authority to act under this Article 9 nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the ENGINEER to the CONTRACTOR, any Subcontractor, any of their agents or employees or any other person performing any of the Work.
- (b) The ENGINEER will not be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions and programs incident thereto, and he will not be responsible for the CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- (c) The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR, or any Subcontractors, or any of his or their agents or employees, or any other persons performing any of the Work.

9.10 Record Drawings:

The CONTRACTOR shall assist the ENGINEER to incorporate all Contract annotated changes, all addenda and all modifications to the plans and specifications into a final as-built set of plans and specifications. Four sets of these final as-built plans and specifications will be supplied to the OWNER.

ARTICLE 10 – CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, the CONTRACTOR will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, and equitable adjustment will be made as provided in Article 11 or Article 12. A Change Order signed by the CONTRACTOR indicates his agreement therewith.
- 10.2 The ENGINEER may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. A Field Order may accomplish these minor changes or alterations. If the CONTRACTOR believes that any minor change or alteration authorized by the ENGINEER entitles him to an increase in the Contract Price or extension of Contract Time, he may make a claim therefore as provided in Articles 11 and 12.
- 10.3 Additional Work performed by the CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.11 and except as provided in paragraph 10.2, above.
- 10.4 The OWNER will execute appropriate Change Orders prepared by the ENGINEER covering changes in the Work to be performed, as provided in paragraph 4.4. And Work performed in an emergency, as provided in paragraph 6.11. Also, any other claim of the CONTRACTOR for a change in the Contract Time or the Contract Price which is approved by the ENGINEER.
- 10.5 It is the CONTRACTOR'S responsibility to notify his surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable bonds, which shall be adjusted accordingly. The CONTRACTOR will furnish proof of such adjustment to the OWNER.

ARTICLE 11 – CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without changing the Contract Price.
- (a) The OWNER may, at any time, without notice to the sureties, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - (i) in the Specifications (including drawings and designs);
 - (ii) in the method or manner of performance of the Work;
 - (iii) in the OWNER-furnished facilities, equipment, materials, services, or site; or
 - (iv) directing acceleration in the performance of the Work.
 - (b) Any other written order or oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the OWNER, which causes any such change, shall be treated as a Change Order under this clause, provided that the CONTRACTOR gives the OWNER written notice stating the date, circumstances, and source of the order and that the CONTRACTOR regards the order as a Change Order.
 - (c) Except as herein provided, no order, statement, or conduct of the OWNER shall be treated as a change under this clause or entitle the CONTRACTOR to an equitable adjustment hereunder.
 - (d) If any change under this clause causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly: Provided, however, that except for claims based on defective specifications, no claim for any change under paragraph (b), above, shall be allowed for any costs incurred more than twenty (20) days before the CONTRACTOR gives written notice as therein required: And provided further, that in the case of defective specifications for which the OWNER is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the CONTRACTOR in attempting to comply with such defective specifications.
 - (e) If the CONTRACTOR intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written Change Order under paragraph (11.1), above, submit to the OWNER a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the OWNER. The statement of claim hereunder may be included in the notice under paragraph (11.1), above.

- (f) No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

11.2 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determine in one of the following ways:

- (a) Each Change Order shall be reviewed in accordance with the provisions of Chapter 62-552, FAC. The CONTRACTOR shall assure that the cost and pricing data submitted for evaluation of Change Orders is based on current accurate and complete data supported by their books and records.
- (b) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved. Should the Work (by quantity) be increased or decreased by 15 percent from that stipulated in the Contract Documents, the OWNER and the CONTRACTOR may request adjustment of the unit prices by negotiation. If negotiation fails to reach agreement, then either party may request arbitration for the volume in excess of the 15 percent differential.
- (c) By negotiated lump sum.
- (d) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the Work plus a fixed amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.

11.3 The term Cost of the Work means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.4:

- (a) Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR:

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

- (b) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith:

All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

- (c) Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors:

If required by OWNER, CONTRACTOR shall deliver such Bids to OWNER who will then determine with the advice of ENGINEER, which Bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of Work Plus a Fee, the Cost of the Work shall be determined in accordance with paragraphs 11.3 and 11.4. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

- (d) Costs of special consultants (including, but not limited to engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.
- (e) Supplemental costs including the following:
- (i) The proportion of necessary transportation, traveling and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.
 - (ii) Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
 - (iii) Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - (iv) Sales, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by any governmental authority.
 - (v) Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments and fees for permits and licenses. Costs for permits and licenses must be shown as a separate item.

- (vi) Losses, damages and expenses, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated in paragraph 11.5(b).
- (vii) The cost of utilities, fuel and sanitary facilities at the site.
- (viii) Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- (ix) Cost of premiums for additional Bonds and Insurance required because of changes in the Work.

11.4 The term Cost of the Work shall not include any of the following:

- (a) Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in subparagraph 11.3(a) – all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.
- (b) Expenses of CONTRACTOR'S principal and branch offices other than his office at the site.
- (c) Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- (d) Cost of premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as otherwise provided in subparagraph 11.3(ix)).
- (e) Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

(f) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.3.

11.5 The CONTRACTOR'S Fee, which shall be allowed to CONTRACTOR for his overhead and profit, shall be determined as follows:

(a) a mutually acceptable firm fixed price; or if none can be agreed upon,

(b) a mutually acceptable fixed fee based on the estimate of the various portions of the Cost of the Work.

11.6 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change that results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the net shall be computed to include overhead and profit, identified separately, for both additions and credits.

11.7 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.3 and 11.4, CONTRACTOR will submit in form prescribed by ENGINEER an itemized cost breakdown together with supporting data.

ARTICLE 12 – CHANGE OF THE CONTRACT TIME

- 12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and ENGINEER within ten (10) days of the occurrence of the event-giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by ENGINEER, if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR, if he makes a claim therefore, as provided in paragraph 12.1, above. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by OWNER, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.
- 12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.
- 12.4 No claim for delay shall be allowed because of failure to furnish Drawings until two (2) weeks after demand for such Drawings and not then unless such claim be reasonable.

ARTICLE 13 – GUARANTEE

13.1 The CONTRACTOR shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees, for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system, that the completed system is free from all defects due to faulty materials or workmanship. The CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or the Work that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period. Express warranties are set forth in the Contract Documents.

ARTICLE 14 – PAYMENTS AND COMPLETION

14.1 Payment to Contractor:

At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the Work performed during the period covered by the partial payment estimate. This submittal must be supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER may retain a portion of the amount otherwise due the CONTRACTOR. Except as State law otherwise provides, the amount the OWNER retains shall be limited to the following:

- (a) Withholding of not more than ten (10) percent of the payment claimed until work is fifty (50) percent complete;
- (b) When work is fifty (50) percent complete, reduction of the withholding to five (5) percent of the dollar value of all Work satisfactorily completed to date, provided that the CONTRACTOR is making satisfactory progress and there is no specific cause for greater withholding;
- (c) When the Work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below five (5) percent to only that amount necessary to assure completion.
- (d) The OWNER may reinstate up to ten (10) percent withholding if the OWNER determines, at its discretion, that the CONTRACTOR is not making satisfactory progress or there is other specific cause for withholding.

14.2 Contractor's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will have passed to the OWNER prior to the making of the Application for Payment. And that it must be free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"); and that no work, materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing

materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

14.3 Approval of Payments:

(a) The ENGINEER'S approval of any payment requested in an Application for Payment shall constitute a representation by him to the OWNER. The ENGINEER'S approval is based on his on-site observations of the Work in progress as an experienced and qualified design professional. The approval is also based on his review of the Application for Payment and the supporting data that show the Work has progressed to the point indicated. Furthermore, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval). And that the CONTRACTOR is entitled to payment of the amount approved. However, by approving any such payment, the ENGINEER shall not be deemed to have represented that he made exhaustive or continuous on-site observations to check the quality or the quantity of the Work; or that he has reviewed the means, methods, techniques, sequences, and procedures of construction; or that he has made any examination to ascertain how or for what purpose the CONTRACTOR has used the moneys paid or to be paid to him on account of the Contract Price; or that title to any Work, materials, or equipment has passed to the OWNER free and clear of any Liens.

(b) The CONTRACTOR shall make the following certification on each request for payment:

“I hereby certify that the labor and materials listed on this request for payment have been used in the construction of this work or that all materials included in this request for payment and not yet incorporated into the construction are now on the site or stored at an approved location; and payment received from the last request for payment has been used to make payments to all first tier subcontractors and suppliers except as listed below.”

(c) The ENGINEER'S approval of final payment shall constitute an additional representation by him to the OWNER that the conditions precedent to the CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.4 have been fulfilled.

(d) The ENGINEER may refuse to approve the whole or any part of any payment if, in his opinion, he is unable to make such representations to the OWNER. He may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspection or tests, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the OWNER from loss because:

- (i) The Work is defective, or completed Work has been damaged requiring correction.
 - (ii) The Work for which payment is requested cannot be verified.
 - (iii) Claims or Liens have been filed or there is reasonable evidence indicating the probable filing thereof.
 - (iv) The Contract Price has been reduced because of Modifications.
 - (v) The OWNER has been required to correct defective Work or complete the Work in accordance with paragraph 13.1.
 - (vi) Of unsatisfactory prosecution of the Work, including failure to clean up as required by paragraph 6.13.
 - (vii) Of persistent failure to cooperate with other contractors on the Project and persistent failure to carry out the Work in accordance with the Contract Documents.
 - (viii) Of liquidated damages payable by the CONTRACTOR.
 - (ix) Of any other violation of, or failure to comply with, the provisions of the Contract Documents.
- (e) Prior to Substantial Completion, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.
 - (f) The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the OWNER.
 - (g) Upon completion and acceptance of the Work, the ENGINEER shall issue a certificate, attached to the final payment request, that he has accepted the Work under the conditions of the Contract Documents. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the Work.
 - (h) The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work. The CONTRACTOR shall, at the OWNER'S request,

furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so, the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S pay from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims. When satisfactory evidence is furnished that all liabilities have been fully discharged, payment to the CONTRACTOR shall be resumed in accordance with the terms of the Contract Documents. But in no event shall the provisions of this paragraph be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

14.4 Acceptance of Final Payment as Release:

The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability other than claims in stated amounts as may be specifically accepted by the CONTRACTOR for all things done or furnished in connection with this Work and for every act and neglect of the OWNER and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.1 Owner May Suspend Work:

The OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the CONTRACTOR and the ENGINEER which shall fix the date on which Work shall be resumed. The CONTRACTOR will resume the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore as provided in Articles 11 and 12.

15.2 Work During Inclement Weather:

No work shall be done under these Specifications except by permission of the OWNER when the weather is unfit for good and careful work to be performed. Should the severity of the weather continue, the CONTRACTOR, upon the direction of the OWNER, shall suspend all work until instructed to resume operations by the OWNER and the Contract Time shall be extended to cover the duration of the order. Work damaged during periods of suspension due to inclement weather shall be repaired and/or replaced by the CONTRACTOR. Any compensation for repairs or replacements shall be subject to approval of the OWNER.

15.3 Owner May Terminate:

(a) If the CONTRACTOR is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the Contract Documents, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety seven (7) days' written notice, terminate the services of the CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the Work by whatever method he may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR or the Surety will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a Change Order.

- (b) Where the CONTRACTOR'S services have been so terminated by the OWNER, said terminations shall not affect any rights of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys by the OWNER due the CONTRACTOR will not release the CONTRACTOR from liability.
- (c) Upon seven (7) days' written notice to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, the CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

15.4 Removal of Equipment:

In the case of termination of this Contract before completion, for any cause whatever, the CONTRACTOR, if notified to do so by the OWNER, shall promptly remove any part or all of his equipment and supplies from the property of the OWNER. Should the CONTRACTOR not remove such equipment and supplies, the OWNER shall have the right to remove them at the expense of the CONTRACTOR. Equipment and supplies shall not be construed to include such items for which the CONTRACTOR has been paid in whole or in part.

15.5 Contractor May Stop Work or Terminate:

If, through no act or fault of the CONTRACTOR, the work is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any Application for Payment within thirty (30) days of its approval and presentation, then the CONTRACTOR, upon seven days' written notice to the OWNER and the ENGINEER, terminate the Agreement and recover from the OWNER payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if the ENGINEER, has failed to act on an Application for Payment or the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon seven (7) days' notice to the OWNER and the ENGINEER stop the Work until he has been paid all amounts then due.

15.6 Owner Furnished Equipment:

In case the OWNER furnishes equipment to the CONTRACTOR to install, but fails to deliver it to the CONTRACTOR as required by the Contract Documents, and in case such failure causes the CONTRACTOR additional expense or need for extension of time, the CONTRACTOR may make such claims upon the OWNER and obtain adjustments as provided herein.

15.7 Liquidated Damages:

If the CONTRACTOR shall fail to complete the Work within the Contract Time, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the Contract Documents for

each calendar day that the CONTRACTOR shall be in default after the time stipulated in the Contract Documents.

ARTICLE 16 – ARBITRATION

- 16.1 All claims, disputes and other matters in question arising out of, or relating to, this Agreement of the breach thereof, except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.4, shall be decided by arbitration. That is, if all parties mutually agree, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, or in a court of the State that has jurisdiction of the location of the Project. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in any court having jurisdiction thereof.
- 16.2 Notice of the request for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association, if both parties mutually agree to arbitration, and a copy shall be filed with the ENGINEER. The request for arbitration shall be made within the thirty (30)-day period specified in paragraph 9.8(b), where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen. But in no event shall it be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question or would it be barred by the applicable statute of limitations.
- 16.3 The CONTRACTOR will carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by him and the OWNER in writing.

ARTICLE 17 – MISCELLANEOUS

- 17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to sender of the notice.
- 17.2 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such progress payment, interest at 1 ½% per month commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.
- 17.3 All Specifications, Drawings and copies thereof furnished by the ENGINEER shall remain his property. They shall not be used on another Project, and, with the exception of those sets that have been signed in connection with the execution of the Agreement, shall be returned to him on request upon completion of the Project.
- 17.4 The duties and obligations imposed by these General Conditions and the FDEP Supplementary Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.17 and 14.3(a) and those in the Contract Documents. And, in addition, the rights and remedies available to OWNER and ENGINEER thereunder, shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.
- 17.5 Should the OWNER or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or of any of his employees or agents or others for whose acts he is legally liable; claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- 17.6 The Contract Documents shall be governed by the law of the location of the Project.