

**SECTION 14
GENERAL CONDITIONS
TO CONSTRUCTION AGREEMENT**

ARTICLE 1 – DEFINITIONS

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

ADDENDA: Written or graphic instruments issued prior to the opening and review of Proposals which clarify, correct, or change the bidding documents or the Contract Documents.

AGREEMENT: The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

APPLICATION FOR PAYMENT: Applications for payment must be made on AIA G702 and G703 in written or electronic form. The form accepted by OWNER which is to be used by CONTRACTOR in requesting progress or final payment, and which is to include such supporting documentation as is required by the Contract Documents.

BONDS: Performance and payment bonds and other instruments of security.

CHANGE ORDER: A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Agreement to be signed by both Owner and Contractor.

COLORADO LABOR: means as provided in C.R.S. 8-17-101 *et. seq.*

CONTRACT DOCUMENTS: Those documents set forth in Article 7 of the Agreement.

CONTRACT PRICE: The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.

CONTINGENCY: means the set percentage, or stipulated sum, of the construction contract amount budgeted for unforeseen conditions or emergencies. Any expenditure of Contingency must be expressly approved in writing by OWNER.

CONTRACT TIME: The number of days (computed as provided in these General Conditions), or the date stated in the Agreement for the completion of the Work.

CONTRACTOR: The person, firm, or corporation with whom OWNER has entered into the Agreement.

COST: means the total cost of labor, materials, provisions, supplies, fees, tests, expenses, equipment rentals, equipment purchases, insurance, supervision, engineering, clerical and accounting services, the value of the use of equipment and reasonable estimates of other administrative costs which may be reasonably apportioned to this Project to complete in accordance with this Contract.

DAY: A calendar day of twenty-four hours measured from midnight to the next midnight.

DEFECTIVE: An adjective which, when modifying the word “Work,” refers to Work that is unsatisfactory, faulty or deficient, or does not meet the requirements of any inspection, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER’S recommendation of final payment or prior to the guarantee period under paragraph 13.12 or prior to the expiration of any applicable statute of limitations.

DRAWINGS: Graphic and pictorial portions of the Contract Documents which show the character and scope of the Work to be performed including design, location and dimension of the Work including plans, elevations, sections, details, schedules and diagrams, and which have been prepared or approved by ENGINEER, and are referred to in the Contract Documents.

EFFECTIVE DATE OF THE AGREEMENT: The date indicated in the Agreement on which it becomes effective, but, if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER: The person, firm or corporation to be identified by OWNER. The ENGINEER may be a department employee of OWNER who may perform all or some of the duties of ENGINEER, but in such case shall exercise his duties in conformance with the standards applicable to independent professional engineers.

FIELD ORDER: A written order issued by ENGINEER or OWNER which orders minor changes in the Work in accordance with paragraph 10.2, but which does not involve a change in the Contract Price or the Contract Time.

FINAL COMPLETION: Means (a) the Work has passed all applicable inspections and Contractor has obtained all required approvals, permits, certificates and sign-offs from the appropriate agencies, including governmental authorities and utilities, (b) all Work, including all punch list Work, has been completed to Owner’s satisfaction, as evidenced by a written approval notice to Contractor from Owner’s Authorized Representative and (c) Contractor has delivered to Owner the as-built Plans, and other documentation required and cleaned the Site.

GUARANTEED MAXIMUM PRICE: means that maximum amount for which the Work will be accomplished.

MODIFICATION: (a) A written amendment of the Contract Documents signed by both parties, or (b) a change order. The Contract Documents may only be amended by a modification. A modification may only be issued after the effective date of the Agreement. The Contract Documents only create a contractual relationship between Owner and Contractor.

NOTICE OF AWARD: The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent Successful Proposer with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

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.

OWNER: Eagle County.

OWNER’S REPRESENTATIVE: The Owner’s Representative is the Eagle County Project Management Department and Josh Miller or his designee.

PROJECT: The “Eagle County Landfill Leachate Holding Pond Construction Project”. The total construction of which the Work to be provided under the Contract Documents may be the whole or a part, as indicated elsewhere in the Contract Documents.

PROPOSAL: The offer or proposal of the Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.

SHOP DRAWINGS: All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by CONTRACTOR, a Subcontractor, manufacturer, fabricator, supplier, or distributor to illustrate some portion of the work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a manufacturer, fabricator, supplier, or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

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 and certain administrative details applicable thereto.

SUBSTANTIAL COMPLETION: The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER with concurrence of OWNER as evidenced by his definitive certificate of substantial completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when a Temporary Certificate of Occupancy is issued by the Building Permit Official or when final payment is due in accordance with paragraph 14.13. The terms “substantially complete” and “substantially completed” as applied to any Work refer to substantial completion thereof.

WORK: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing and incorporating materials and equipment into all construction, all as required by the Contract Documents or reasonably inferable therefrom and includes all labor, materials, equipment and services provided or to be provided by CONTRACTOR or to fulfill CONTRACTOR’S obligations.

ARTICLE 2 – PRELIMINARY MATTERS

DELIVERY OF BONDS:

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

COPIES OF DOCUMENTS:

- 2.2 OWNER shall furnish to CONTRACTOR up to two (2) copies (unless otherwise specified in the Contract Documents) of the Contract Documents as are reasonable necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED:

- 2.3 The Contract Time will commence upon issuance of a Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the effective date of the Agreement.

STARTING THE PROJECT:

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

BEFORE STARTING CONSTRUCTION:

- 2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER and OWNER any conflict, error, or discrepancy which CONTRACTOR may discover; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, or discrepancy in the Drawings or Specifications, unless CONTRACTOR had actual knowledge thereof, or should reasonably have known thereof.
- 2.6 Within ten days after the effective date of the Agreement (unless otherwise specified in the Contract Documents) CONTRACTOR shall submit to ENGINEER and OWNER for review and acceptance an estimated progress schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of shop drawings submissions, and a preliminary schedule of values of the Work.
- 2.7 Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates of insurance (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5 hereof.

PRE-CONSTRUCTION CONFERENCE:

- 2.8 Within twenty days after the effective date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference will be held for review and acceptance of the schedules referred to in paragraph 2.6, to establish procedures for handling shop drawings and other submittals, and for processing applications for payment, and to establish a working understanding among the parties as to the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT AND REUSE

INTENT:

- 3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. They may be altered only by a Modification.
- 3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If during the performance of the Work, CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, he shall report it to ENGINEER and OWNER in writing at once and before proceeding with the Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflicts, error, or discrepancy

in the Specifications or Drawings unless CONTRACTOR had actual knowledge thereof, or should reasonably have known thereof.

- 3.3 The Contract documents include those documents set forth in Article 7 of the Agreement.
- 3.4 It is the intent of the Specifications and Drawings to describe a complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with such meaning. References to codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, or code in effect at the time of opening of Proposals (or on the effective date of the agreement if there were no Proposals), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the contract documents) shall change the duties and responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER with concurrence of OWNER as provided for in paragraph 9.3.
- 3.5 The Contract Documents will be governed by the law of the place of the Project.

REUSE OF DOCUMENTS:

- 3.6 Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier, or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project, or any other project, without written consent of OWNER and ENGINEER, and specific written verification or adaptation by ENGINEER.

ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

- 4.1 Intentionally Omitted.

PHYSICAL CONDITIONS – INVESTIGATIONS AND REPORTS:

- 4.2 Reference is made to the supplementary conditions for identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the Work which have been relied upon by ENGINEER in the preparation of the drawings and specifications. Such reports are not part of the Contract Documents with the exception of any reports identified in Article 7 of the Agreement.

UNFORESEEN PHYSICAL CONDITIONS:

- 4.3 CONTRACTOR shall promptly notify OWNER and ENGINEER in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. ENGINEER will promptly review those

conditions and advise OWNER in writing if further investigation or tests are necessary. Promptly thereafter, OWNER may obtain the necessary additional investigations and tests, and furnish copies to ENGINEER and CONTRACTOR. If ENGINEER and OWNER find that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a change order may be issued incorporating the necessary revisions as agreed upon by the parties.

REFERENCE POINTS:

- 4.4 OWNER shall provide engineering surveys for construction to establish reference points which in his judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified herein), shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER and OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professional qualified personnel.

ARTICLE 5 – BONDS AND INSURANCE

PERFORMANCE AND OTHER BONDS

- 5.1 CONTRACTOR shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These bonds shall remain in effect at least until two years after the date of final payment, except as otherwise provided by law. CONTRACTOR shall also furnish other bonds as are required by the Contract Documents. All bonds shall be in the forms prescribed by the Contract Documents, and be executed by such sureties as (a) are licensed to conduct business in the state of Colorado, and (b) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- 5.2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the state of Colorado, or it ceases to meet the requirements of clauses (a) and (b) of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another bond and surety, both of which shall be acceptable to OWNER.

INSURANCE:

- 5.3 CONTRACTOR'S Liability Insurance: The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S operations under the Agreement, whether such operations be by himself, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

All such insurance shall remain in effect until final payment, and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations

insurance for at least two years after final payment, and furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

- 5.3.1 Claims under Worker’s Compensation, disability benefits, and other similar employee benefit acts;
- 5.3.2 Claims for damage because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage;
- 5.3.3 Claims for damage because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual personal injury liability coverage; and
- 5.3.4 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

Worker’s Compensation insurance shall provide coverage as required by the laws of the State of Colorado.

Insurance covering claims for damages to persons or property required by the preceding paragraph (except subparagraph 5.3.1) shall be in the following minimum amounts:

Bodily Injury Liability:	
Each Person:	\$1,000,000
Each Accident or Occurrence:	\$2,000,000
Property Damage Liability:	
Each Accident or Occurrence:	\$1,000,000
Aggregate:	\$2,000,000
Products and completed operations aggregate	\$2,000,000
Employers Liability, including Occupational Disease	\$500,000
Any one fire	\$50,000

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, CONTRACTOR shall immediately obtain additional insurance to restore the full aggregate limit and furnish to OWNER a certificate or other document satisfactory to OWNER showing compliance with this provision.

Said insurance shall be furnished in types specified as follows:

- 5.3.5 CONTRACTOR’S Commercial General Liability Insurance issued to and covering the liability for damage imposed by law upon the CONTRACTOR and each Subcontractor with respect to all Work performed by them under the Agreement and covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability.

- 5.3.6 CONTRACTOR'S Protective Liability Insurance issued to and covering the liability for damages imposed by law upon the CONTRACTOR and each Subcontractor with respect to all Work under the Agreement performed for the CONTRACTOR by Subcontractors.
- 5.3.7 Completed Operations Liability Insurance issued to and covering the liability for damage imposed by law upon the CONTRACTOR and each Subcontractor arising between the date of final cessation of the Work, and the date of final acceptance thereof out of that part of the Work performed by each.
- 5.3.8 Comprehensive Automobile Insurance covering any auto (including owned, hired and non-owned autos) shall be carried with a minimum limit of \$1,000,000.00 each accident combined single limit. All liability and property damage insurance required hereunder shall be Comprehensive General and Automobile Bodily Injury and Property Damage form of policy.
- 5.3.9 Employer's Liability Insurance covering all of CONTRACTOR's and any Subcontractor's employees acting within the course and scope of their employment.
- 5.3.10 The CONTRACTOR shall in addition, and in the amounts required under the above, obtain Protective Liability Insurance issued to and covering the liability for damages imposed by law upon the OWNER with respect to all operations under the Agreement by the CONTRACTOR or his Subcontractors, including omissions and supervisory acts by the OWNER.
- 5.4 Comprehensive Risk Policy Option: In lieu of the several policies specified for CONTRACTOR'S Liability Insurance, a comprehensive liability and property damage insurance policy inclusive of all the insurance and requirements hereinafter set forth, with an umbrella covering of \$2,000,000, subject to the approval of the OWNER, will be permissible.
- 5.5 Subcontractor's Insurance: Before permitting any of his Subcontractors to perform any Work under this Agreement, CONTRACTOR shall either (a) require each of his Subcontractors to procure and maintain during the life of his Subcontracts, Subcontractor's Public Liability and Property Damage Insurance of the types and in the amounts as may be applicable to his Work, which type and amounts shall be subject to the approval of the OWNER, or (b) insure the activities of his Subcontractors in his own policy.
- 5.6 Builder's Risk Insurance: CONTRACTOR shall procure and maintain, for the duration of the Work of this Project, Builder's Risk Insurance, including the perils of fire, extended coverage (loss due to vehicles, explosion, wind, flood, riot, etc.), vandalism and malicious mischief, and special extended coverage (loss due to falling objects, collapse, water damage from faulty or leaking systems, etc.) in the full amount of the Contract Price plus the cost of authorized extras. Said amount of insurance coverage shall be considered to cover the insurable value of the Work under this Agreement which is considered not to exceed one hundred percent (100%) of the amount of this Agreement and authorized extras. Such policy shall not insure any tools or equipment, or temporary structures erected at the site and belonging to any person or persons, or their Subcontractors who are obliged by contract with the OWNER to do Work on the Projects.

Such insurance shall be placed jointly in the names of the OWNER, CONTRACTOR, and any and all Subcontractors, and any and all others obliged by contract with the OWNER to do Work on this Project and at the OWNER's option, any other person or persons whom the OWNER

deems to have an insurable interest in said property, or any part thereof, payable as their several interests may appear.

CONTRACTOR shall furnish OWNER with certification of said insurance prior to commencement of any Work. Any proceeds obtained from insurance provided for by this paragraph shall be paid to and held by the OWNER as trustee. The OWNER shall have the right to withhold payment of such proceeds until such time as the Work destroyed or damaged and covered by such insurance shall be reconstructed and shall pay such proceeds on an installment basis similar to that provided for by progress payment covering the original Work.

5.7 CONTRACTOR'S pollution liability insurance: CONTRACTOR shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from CONTRACTOR'S operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

5.8 Certificates of Insurance: Certificates of Insurance acceptable to the OWNER shall be provided to the OWNER for attachment to the Agreement. These Certificates shall contain provisions naming the OWNER as an additional insured under all CONTRACTOR'S insurance, as more fully required by the General Conditions herein, and that coverage afforded under the policies will not be cancelled until at least thirty days prior written notice has been given the OWNER. CONTRACTOR and his Subcontractors shall not permit any of his Subcontractors to start Work until all required insurance has been obtained and certificates with the proper endorsements have been filed with the OWNER. Failure of the CONTRACTOR to comply with the foregoing insurance requirement shall in no way waive the OWNER'S rights hereunder.

5.9 Owner's Liability Insurance: The OWNER, at his option, may but shall not be required to purchase and maintain such liability insurance as will protect him against claims which may arise from operations under this Agreement. Purchasing and maintaining such insurance, however, will not relieve the CONTRACTOR from purchasing and maintaining the insurance hereinbefore specified.

5.10 Loss of Use of Insurance: The OWNER, at his option, may but shall not be required to, purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

5.11 Coverage required of CONTRACTOR and any of its Subcontractors shall be primary over any insurance or self-insurance program carried by OWNER.

5.12 All insurance policies in any way related to this Agreement and secured and maintained by CONTRACTOR as required in this Article 5 shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Owner, its members, managers, agencies, institutions, organizations, officers, agents, employees and volunteers.

5.13 OWNER shall be named as additional insured on the Commercial General Liability, Automobile Liability Insurance and Completed Operations Liability Insurance policies.

5.14 CONTRACTOR shall insert a clause containing the terms of section 5.3 and all its subparts in all contracts or sub-contracts, and all Subcontractors shall purchase and maintain the insurance on the terms and conditions as set forth herein.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE:

- 6.1 CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR’S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.
- 6.2.1 CONTRACTOR shall maintain and deliver to OWNER a daily job report of Work performed, notable events and incidents, weather conditions, Subcontractor’s performance, any deficiencies (and the corrective actions taken), delays, and other information that OWNER may reasonably request.
- 6.2.2 CONTRACTOR will participate in meetings with OWNER at a specific date, time and place established by OWNER, and to deliver all attending parties current reports on the following items: progress payment requests; requests for information-current log; change requests- current log; submittals- current log; change orders- current list; claims- pending claims, notices of claims and any plans to file claims, if applicable, project progress report, job problems and quality control review.

LABOR, MATERIALS AND EQUIPMENT:

- 6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work, and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the supplementary conditions, if any, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime Work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER’S written consent given after prior written notice to ENGINEER.
- 6.4 Colorado labor shall be employed to perform the Work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on the Project. “Colorado labor” means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification.
- 6.5 CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, and

sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of Work.

- 6.6 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required test) as to the kind and quality of materials and equipment.
- 6.7 All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise provided in the Contract Documents.
- 6.8 CONTRACTOR shall replace supervision personnel as-needed based upon OWNER's assessment that the Project is not adequately staffed or the Work is not progressing adequately.
- 6.9 CONTRACTOR shall at all times maintain a full-time management and supervisory staff of competent persons at the Project site to coordinate and provide general direction of the Work and progress of Subcontractors on the Project.
- 6.10 CONTRACTOR agrees that only competent and skilled workmen who satisfactorily perform their duties shall be employed on the Project and CONTRACTOR shall ensure that there are an adequate and competent supply of skilled workmen and materials as necessary to carry out the Work on a continuous basis.

EQUIVALENT MATERIALS AND EQUIPMENT:

- 6.11 Whenever materials or equipment are specified or described in the drawings or specifications by using the name of a proprietary item, or the name of a particular manufacturer, fabricator, supplier, or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by ENGINEER and OWNER if sufficient information is submitted by CONTRACTOR to ENGINEER and OWNER to determine that the material or equipment proposed is equivalent to that named. The procedure for review by ENGINEER and OWNER will be as set forth in paragraphs 6.11.1 and 6.11.2 below.
 - 6.11.1 Requests for review of substitute items of material and equipment will not be accepted by ENGINEER or OWNER from anyone other than CONTRACTOR consistent with section 1.7.3 of the Basic Requirements in the Leachate Holding Pond Construction Technical Specifications ("Basic Requirements"). If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER and OWNER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the drawings or specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or savings

that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER and OWNER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish, at CONTRACTOR'S expense, additional data about the proposed substitute. ENGINEER and OWNER will be the sole judge of acceptability, and no substitute will be ordered or installed without ENGINEER'S and OWNER's prior written acceptance. OWNER may require CONTRACTOR to furnish, at CONTRACTOR'S expense, a special performance guarantee or other surety with respect to any substitute.

- 6.11.2 ENGINEER will record time required by ENGINEER and ENGINEER'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the drawings or specifications occasioned thereby, whether or not ENGINEER accepts a proposed substitute. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER'S consultants for evaluating any proposed substitute.

CONCERNING SUBCONTRACTORS:

- 6.12 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. A Subcontractor or other person or organization identified in writing to OWNER and ENGINEER by CONTRACTOR prior to the Notice of Award, and not objected to in writing by OWNER or ENGINEER prior to the Notice of Award, will be deemed acceptable to OWNER and ENGINEER. Acceptance of any Subcontractor, other person or organization by OWNER or ENGINEER shall not constitute a waiver of any right of OWNER or ENGINEER to reject defective work. If OWNER or ENGINEER, after due investigation, has reasonable objection to any Subcontractor, or other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute, and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate change order shall be issued. CONTRACTOR shall not be required to employ any Subcontractor, other person or organization against whom CONTRACTOR has reasonable objection.
- 6.13 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 CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create a 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 monies 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.
- 6.14 The divisions and sections of the specifications and the identifications of any drawings shall not control CONTRACTOR in dividing the Work among Subcontractors, or delineating the Work to be performed by any specific trade.

6.15 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER and ENGINEER. CONTRACTOR shall pay each Subcontractor a just share of any insurance monies received by CONTRACTOR on account of losses under policies issued pursuant to paragraph 5.6.

PATENT FEES AND ROYALTIES:

6.16 CONTRACTOR shall pay all license fees and royalties, and assume all costs incident to the use in the performance of the Work, or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work, and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work, or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

PERMITS:

6.17 Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain and pay for all construction permits and licenses. CONTRACTOR shall obtain and pay for Eagle County licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Proposals. CONTRACTOR shall pay all charges of utility service companies for connections to the Work, and OWNER shall pay all charges of such companies for capital costs related thereto.

LAWS AND REGULATIONS:

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

TAXES:

6.19 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by him in accordance with the law of the place of the Project. OWNER of this Project is Tax Exempt.

USE OF PREMISES:

- 6.20 CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 6.21 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the premises as well as all tools, appliances, construction equipment, and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.
- 6.22 CONTRACTOR shall not load, nor permit any part of any structure to be loaded, in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 6.23 CONTRACTOR shall be responsible for removing all water and or mud interfering with the Work.
- 6.24 CONTRACTOR shall perform the Work so as not to interfere with or disrupt the business operations of any adjacent businesses.
- 6.25 *Intentionally Omitted.*
- 6.26 CONTRACTOR will locate all underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any easements containing such facilities, including those that convey electricity, gasses, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems which shall collectively be known as the "Underground Facilities" prior to performing the Work. Unless it is otherwise expressly provided in the Contract Documents;
- 6.26.1 OWNER shall not be responsible for providing any information to CONTRACTOR regarding the Underground Facilities; and
- 6.26.2 The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
- a. Locating all Underground Facilities;
 - b. Coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction; and
 - c. Assurance that all safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

RECORD DOCUMENTS:

- 6.27 CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings, and samples at the site in good order and annotated to show all changes made during the construction process. These shall be available to ENGINEER for examination and shall be delivered to ENGINEER for OWNER upon completion of the Work.

SAFETY AND PROTECTION:

- 6.28 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- 6.28.1 all employees and Subcontractors on the Work and other persons who may be affected thereby,
- 6.28.2 all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and
- 6.28.3 other property at the site, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in paragraph 6.28.2 or 6.28.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the sole fault of drawings or specifications, or solely to the acts or omissions of OWNER or ENGINEER). CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR, in accordance with paragraph 14.13, that the Work is acceptable.
- 6.29 CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent, unless otherwise designated in writing by CONTRACTOR to OWNER.

EMERGENCIES:

- 6.30 In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER to OWNER, is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER and OWNER prompt written notice of any significant changes in the Work, or deviations from the Contract Documents caused thereby.

SHOP DRAWINGS AND SAMPLES:

- 6.31 After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for review and approval, in accordance with the accepted schedule of Shop Drawing submissions, five copies (unless otherwise specified in the Basic Requirements section 1.21 B) of all shop drawings, which shall have been checked by, and stamped with the approval of, CONTRACTOR, and identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and like information to enable ENGINEER to review the information as required.
- 6.32 CONTRACTOR shall also submit to ENGINEER for review and approval, 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 CONTRACTOR, identified clearly as to material, manufacturer, and any pertinent catalog numbers, and the use for which intended.
- 6.33 At the time of each submission, CONTRACTOR shall, in writing, call ENGINEER'S and OWNER's attention to any deviations that the shop drawings or samples may have from the requirements of the Contract Documents.
- 6.34 ENGINEER with prior approval of OWNER will review and approve, with reasonable promptness, shop drawings and samples, but ENGINEER'S and/or OWNER's review and approval shall be only for conformance with the design concept of the Project, and for compliance with the information given in the Contract Documents, and shall not extend to means, methods, sequences, techniques, or procedures of construction, or to safety precautions of programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make any corrections required by ENGINEER or OWNER, and shall return the required number of corrected copies of shop drawings, and resubmit new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER or OWNER on previous submittals. CONTRACTOR'S stamp of approval on any shop drawing or sample shall constitute a representation to OWNER and ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials catalog numbers, and similar data, or assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.
- 6.35 Where a Shop Drawing or sample is required by the specifications, no related Work shall be commenced until the submittal has been reviewed and approved by ENGINEER as to Shop Drawing and ENGINEER and OWNER as to samples
- 6.36 ENGINEER'S review and approval of Shop Drawings or ENGINEER'S and OWNER'S review and approval samples shall not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has, in writing, called ENGINEER'S and /or OWNER's attention to such deviation at the time of submission, and ENGINEER with prior approval of OWNER has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by ENGINEER or OWNER relive CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

CONTINUING THE WORK:

- 6.37 CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of

any disputes or disagreements, except as CONTRACTOR and OWNER may otherwise agree in writing.

INDEMNIFICATION:

- 6.38 To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER, and their officials, agents and employees, from and against any and all claims, damages, liabilities, losses, cleanup or damages derived from pollutants, and expenses including, but not limited to, attorney's fees and costs arising out of, or resulting from, the performance or non-performance of the Work, and including, but not limited to, claims, damages, liabilities, losses, or expenses attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom or is caused, in whole or in part, by any negligent act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Nothing in the contract shall be interpreted that the OWNER waives its sovereign immunity granted under Colorado Governmental Immunity Act if applicable or other applicable law.
- 6.39 In any and all claims against OWNER or ENGINEER, or any of their agents or employees, by any employee of 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 6.38 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.
- 6.40 The obligations of CONTRACTOR under paragraph 6.38 shall not extend to the liability of ENGINEER, his agents, or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications.

ARTICLE 7 – WORK BY OTHERS

- 7.1 OWNER may perform additional Work related to the Project by himself, or have additional work performed by utility service companies, or let other direct contracts therefore which shall contain general conditions similar to these. CONTRACTOR shall afford the utility service companies and the other contractors who are parties to such direct contracts (or OWNER, if OWNER is performing the additional work with OWNER'S employees) reasonable opportunity for the introduction and storage of materials and equipment, and the execution of work, and shall properly connect and coordinate his work with theirs.
- 7.2 If any part of CONTRACTOR'S Work depends, for proper execution or results, upon the Work of any such other contractor or utility service company (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER and OWNER in writing any patent or apparent defects or deficiencies in such Work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so report shall constitute an acceptance of the other Work as fit and proper for integration with CONTRACTOR'S Work, except for latent or non-apparent defects and deficiencies in the other Work.
- 7.3 CONTRACTOR shall do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and integrate with such other Work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise

altering their work, and will only cut or alter their work with the written consent of ENGINEER and OWNER and the others whose work will be affected.

- 7.4 If the performance of additional work by other contractors or utility service companies or OWNER was not noted in the Contract Documents, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by OWNER or others involves additional expense to CONTRACTOR, or requires an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

- 8.1 OWNER shall issue communications to CONTRACTOR or through ENGINEER.
- 8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an ENGINEER whose status under the Contract Documents shall be that of the former ENGINEER.
- 8.3 OWNER and all of its employees and agents shall have the right to full access and use of the Project site. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of OWNER’S rights or remedies under the Contract Documents.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

OWNER’S REPRESENTATIVE:

- 9.1 The duties and responsibilities and the limitations of authority of ENGINEER as an OWNER'S representative during construction are set forth in the Contract Documents, and shall not be extended without written consent of OWNER and ENGINEER. Notwithstanding anything to the contrary herein, in all instances in the Contract Documents where ENGINEER has the authority to make decisions concerning quality of and acceptance of the Work performed by CONTRACTOR the ENGINEER shall first discuss such decision and proposed acceptance with OWNER and obtain its approval prior to communicating with the CONTRACTOR. Further, in all instances in the Contract Documents where ENGINEER has the authority to make a decision that impacts the Project budget or Contract Price or payment to the CONTRACTOR, then ENGINEER shall first discuss the payment or costs with OWNER and obtain its approval prior to approving any payment, additive or deductive Work. This paragraph is not intended as and shall not be a waiver of ENGINEER’S responsibility for oversight of the Work.

VISITS TO SITE:

- 9.2 ENGINEER will make visits to the site at intervals appropriate to the various stages of construction 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. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work, and will endeavor to guard OWNER against defects and deficiencies in the Work.

CLARIFICATIONS AND INTERPRETATIONS:

- 9.3 ENGINEER will issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents (in the form of drawings or otherwise) as ENGINEER and OWNER may determine necessary, which shall be consistent with, or reasonably inferable from, the overall intent of the Contract Documents.
If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefore, as provided in Article 11 or Article 12.

REJECTING DEFECTIVE WORK:

- 9.4 ENGINEER after conferring and receiving approval of OWNER will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work as fabricated, installed, or completed.

SHOP DRAWINGS, CHANGE ORDERS, AND PAYMENTS:

- 9.5 In connection with ENGINEER'S responsibility for Shop Drawings and samples, see paragraphs 6.31 through 6.37 inclusive.
- 9.6 In connection with ENGINEER'S responsibilities as to Change Orders see Articles 10, 11, and 12.
- 9.7 In connection with ENGINEER'S responsibilities in respect to applications for payment, etc., see Article 14.

PROJECT REPRESENTATION:

- 9.8 *Intentionally Omitted.*

DECISIONS ON DISAGREEMENTS:

- 9.9 ENGINEER will be the initial interpreter of the requirements of the Contract Documents concerning the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work, or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work, shall be referred initially to ENGINEER in writing with a request for a formal decision which ENGINEER and OWNER will together render in writing within a reasonable time. The final decision concerning any claim, dispute or other matter relating to acceptability of the Work or interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be OWNER's.

LIMITATIONS ON ENGINEER'S RESPONSIBILITIES:

- 9.10 Neither ENGINEER'S or OWNER's authority to act under this Article 9, or elsewhere in the Contract Documents, nor any decision made by ENGINEER or OWNER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER or OWNER to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees, or any other person performing any of the Work.

- 9.11 Whenever, in the Contract Documents, the terms “as ordered”, “as directed”, “as required”, “as allowed”, or terms of like effect or import are used, or the adjectives “reasonable”, “suitable”, “acceptable”, “proper”, or “satisfactory”, or adjectives of like effect or import are used to describe requirement, direction, review, or judgment of ENGINEER as to the Work, it is intended that such requirement direction, review, or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work, or authority to undertake responsibility contrary to the provisions of paragraphs 9.12 or 9.13.
- 9.12 ENGINEER and OWNER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER and OWNER will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- 9.13 ENGINEER and OWNER will not be responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

ARTICLE 10 – CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by written change orders. Upon receipt of a change order, CONTRACTOR shall 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, an equitable adjustment will be made as provided in Article 11 or Article 12 on the basis of a claim made by either party.
- 10.2 ENGINEER with approval of OWNER may authorize minor changes in the Work, not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order, and shall be binding on OWNER, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that a field order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.
- 10.3 Additional Work performed without authorization of a change order will not entitle CONTRACTOR 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 6.30, and except as provided in paragraph 13.9.
- 10.4 OWNER may execute appropriate change orders prepared by ENGINEER covering changes in the Work which are required by OWNER, or required because of unforeseen physical conditions or emergencies, or because of uncovering Work found not to be defective, or as provided in paragraphs 11.10 or 11.11.
- 10.5 *Intentionally Omitted.*

ARTICLE 11 – CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER and ENGINEER within seven days of the occurrence of the event giving rise to the claim. Any change in the Contract Price resulting from any such claim shall first be approved by ENGINEER and OWNER before being incorporated in a change order.
- 11.3 No change orders or other form of order or directive which requires additional compensable Work to be performed may be issued or be effective unless accompanied by a written assurance to the CONTRACTOR that lawful appropriations to cover the costs of the additional Work have been made.
- 11.4 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 determined in one of the following ways:
- 11.4.1 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 (subject to the provisions of paragraph 11.10).
- 11.4.2 By mutual acceptance of a lump sum.
- 11.4.3 On the basis of the Cost of the Work (determined as provided in paragraphs 11.5 and 11.6) plus a Contractor's Fee for overhead and profit as provided in paragraph 11.7.
- 11.4.4 Regardless of method for determining the value of any Work covered by a change order, the CONTRACTOR shall provide OWNER with written documentation concerning the claim, including but not limited to the specific reasons for the claim.
- 11.5 The term "Cost of the Work" means the sum of any and all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality for the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.6:
- 11.5.1 Payroll costs for employees in the direct employ of CONTRACTOR on-site 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, worker'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, or on Sunday or legal holidays, shall be included in the above only to the extent authorized by OWNER.

- 11.5.2 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 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.
- 11.5.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR, and 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 the Work, the Subcontractor's Cost of the Work plus a fee shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All Subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.5.4 Supplemental costs including the following:
- 11.5.4.1 The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.
- 11.5.4.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machines, 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.
- 11.5.4.3 Rentals of all construction equipment and machinery, and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- 11.5.4.4 *Intentionally Omitted.*
- 11.5.4.5 Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments, and fees for permits and licenses.
- 11.5.4.6 *Intentionally Omitted.*
- 11.5.4.7 *Intentionally Omitted.*
- 11.5.4.8 *Intentionally Omitted.*
- 11.5.4.9 Cost of premiums for additional bonds and insurance required because of changes in the Work.

- 11.6 The term “Cost of the Work” shall *not* include any of the following:
- 11.6.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorship), general managers, ENGINEER's, ENGINEERS, 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 agreed upon schedule of job classifications referred to in subparagraph 11.5.1. all of which are considered to be administrative costs covered by the Contractor's Fee.
 - 11.6.2 Expenses of CONTRACTOR'S principal and branch office, other than CONTRACTOR'S office at the site.
 - 11.6.3 Any part of CONTRACTOR'S capital expenses including interest on CONTRACTOR'S capital employed for the Work, and charges against CONTRACTOR for delinquent payments.
 - 11.6.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional bonds and insurance required because of changes in the Work).
 - 11.6.5 Costs due to the negligent performance or non-performance 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.
 - 11.6.6 Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in paragraph 11.5.

CONTRACTOR'S FEE:

- 11.7 The Contractor's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
- 11.7.1 A mutually acceptable fixed fee as provided in the SUPPLEMENTAL UNIT PRICING for Construction Manager/General Contractor Overhead and Profit Fee.
 - 11.7.2. No fee shall be payable on the basis of costs itemized under paragraphs 11.5.4 and 11.6.
- 11.8 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which 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 combined adjustment to overhead and profit shall be figured on the basis of the net increase or decrease in allowable costs, if any.

ADJUSTMENT OF UNIT QUANTITIES:

- 11.9 Whenever the cost of any Work is to be determined based upon unit price, CONTRACTOR will submit, in form acceptable to ENGINEER and OWNER, an itemized cost breakdown together with supporting data.

- 11.10 Where the quantity of Work with respect to any item that is covered by a unit price differs materially and significantly from the quantity of such Work indicated in the Contract Documents, an appropriate change order (additive or deductive) may be issued on recommendation of ENGINEER with written approval of OWNER. In no event will the unit price bid by CONTRACTOR be modified, but the quantity of any item may be increased or decreased as set forth herein. Notwithstanding the foregoing, in no event will the change modify the not to exceed the Contract Price or otherwise be modified without a change order approved by OWNER in writing.

CASH ALLOWANCES:

- 11.11 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents, and shall cause the Work so covered to be done by such Subcontractors, manufacturers, fabricators, suppliers, or distributors, and for such sums within the limit of the allowances as may be acceptable to ENGINEER and OWNER. Upon final payment, the Contract Price shall be adjusted as required, and an appropriate change order issued. CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be valid.

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 seven days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a change order.
- 12.2 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of Articles 11 and 12 are CONTRACTOR'S sole remedies for delay by any cause whatsoever, including acts of OWNER.

ARTICLE 13 – WARRANTY AND GUARANTEE; TESTS AND INSPECTION; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

WARRANTY AND GUARANTEE:

- 13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13. Further, CONTRACTOR warrants to OWNER that (i) materials and equipment furnished under the Contract Documents shall be of highest quality and new unless otherwise required or permitted by the Contract Documents; (ii) the Work shall be free from defects and deficiencies; (iii) the Work shall conform to the requirements of the Contract Documents, applicable laws and applicable permits; and (iv) the Work shall be performed in a good and workman like manner. All guarantees and warranties of equipment or materials furnished to CONTRACTOR or any Subcontractor(s) by any manufacturer or supplier shall be for the benefit of OWNER. CONTRACTOR does hereby covenant, warrant and agree that it shall repair or replace any and all of the Work, together with other Work which may be displaced by such repair or replacement, without any cost to OWNER

for a period of two years following the date of Substantial Completion of the Work. This obligation shall survive both final payment for the Work or designated portion thereof and termination of this Agreement.

ACCESS TO WORK:

- 13.2 OWNER, ENGINEER, ENGINEER'S representatives, other representatives of OWNER, testing agencies, and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

TESTS AND INSPECTIONS:

- 13.3 CONTRACTOR shall give ENGINEER and OWNER timely notice of readiness of Work for all required inspections, tests or approvals.
- 13.4 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested, or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith, and furnish ENGINEER and OWNER the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER'S or ENGINEER'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation of the Work. The cost of all other inspections, tests, and approvals required by the Contract Documents shall be paid by OWNER (unless otherwise specified).
- 13.5 Any inspections, tests, or approvals, other than those required by law, ordinance, rule, regulation, code, or order of any public body having jurisdiction, shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).
- 13.6 If any Work that is to be inspected, tested, or approved is covered without written concurrence of ENGINEER and OWNER, it must, if requested by ENGINEER or OWNER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense, unless CONTRACTOR has given ENGINEER and OWNER timely notice of CONTRACTOR'S intention to cover such Work and ENGINEER or OWNER has not acted with reasonable promptness in response to such notice.
- 13.7 Neither observations by ENGINEER or OWNER nor inspections, tests, or approvals by others shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the Contract Documents.

UNCOVERING WORK:

- 13.8 If any Work is covered contrary to the written request of ENGINEER or OWNER, it must, if requested by ENGINEER or OWNER, be uncovered for ENGINEER'S and OWNER'S observation and replaced at CONTRACTOR'S expense.
- 13.9 If ENGINEER or OWNER considers it necessary or advisable that covered Work be observed by ENGINEER or OWNER, or inspected or tested by others, CONTRACTOR, at ENGINEER'S or

OWNER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER or OWNER may require, that portion of the Work in question, furnish all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive change order shall be issued. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

OWNER MAY STOP THE WORK:

- 13.10 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

- 13.11 If required by ENGINEER or OWNER, CONTRACTOR shall promptly, without cost to OWNER and as specified by ENGINEER or OWNER, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER or OWNER, remove it from the site and replace it with non-defective Work in a manner acceptable to the ENGINEER and OWNER.

TWO YEAR CORRECTION PERIOD:

- 13.12 If, within two years after the date of Substantial Completion, or such longer period of time as may be prescribed by law, or by the terms of any applicable special guarantee required by the Contract Documents, or by any other specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER, and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site, and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

ACCEPTANCE OF DEFECTIVE WORK:

- 13.13 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and prior to ENGINEER'S recommendation of final payment) prefers to accept it, OWNER may do so. In such case, if acceptance occurs prior to ENGINEER'S recommendation of final payment, a change order shall be issued incorporating the necessary revisions in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to OWNER.

OWNER MAY CORRECT DEFECTIVE WORK:

- 13.14 If CONTRACTOR fails, within a reasonable time after written notice of ENGINEER and OWNER, to proceed to correct defective Work, or to remove and replace rejected Work as required by ENGINEER or OWNER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising his rights under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment, and machinery at the site, and incorporate in the Work all materials and equipment stored at the site, or for which OWNER has paid CONTRACTOR, but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents, and employees such access to the site as may be necessary to enable OWNER to exercise his rights under this paragraph. All direct and indirect costs of OWNER in exercising such rights shall be charged against CONTRACTOR in an amount verified by ENGINEER, and a change order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required, and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights hereunder.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SCHEDULES:

- 14.1 At least ten days prior to submitting the first application for a progress payment, CONTRACTOR shall (except as otherwise specified in the general requirements) submit to ENGINEER and OWNER a progress schedule, a final schedule of Shop Drawing submissions, and, where applicable, a schedule of values of the Work. These schedules shall be satisfactory in form and substance to ENGINEER and OWNER. The schedule of values shall include quantities and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by ENGINEER and OWNER, it shall be incorporated into a form of application for payment acceptable to ENGINEER and OWNER.

APPLICATION FOR PROGRESS PAYMENT:

- 14.2 At least ten days before each progress payment falls due (but not more often than once a month), CONTRACTOR shall submit to ENGINEER and OWNER for review an application for payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the application, and accompanied by such supporting documentation as is required by the Contract Documents, and also as ENGINEER or OWNER 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 the site or at another location agreed to in writing, the application for payment shall also be accompanied by such data, satisfactory to OWNER, as will establish OWNER'S title

to the material and equipment, and protect OWNER'S interest therein, including applicable insurance. Each subsequent application for payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior applications for payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR'S WARRANTY OF TITLE:

- 14.3 CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests, and encumbrances (hereafter in these General Conditions referred to as "Liens").

REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

- 14.4 ENGINEER will, within ten days after receipt of each application for payment, either indicate in writing a recommendation of payment and present the application to OWNER, or return the application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the application. OWNER shall, within twenty days of presentation to him of the application for payment with ENGINEER'S recommendation, pay CONTRACTOR the amount recommended.
- 14.5 ENGINEER'S recommendation of any payment requested in an application for payment will constitute a representation by ENGINEER to OWNER that, based on ENGINEER'S on-site observations of the Work in progress as an experienced and qualified design professional, and on ENGINEER'S review of the application for payment, and the accompanying data and schedules, the Work has progressed to the point indicated; that, to the best of ENGINEER'S 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, and to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation); and, that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed, or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials, or equipment has passed to OWNER free and clear of any Liens.
- 14.6 ENGINEER'S recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.
- 14.7 ENGINEER may refuse to recommend the whole, or any part of any payment if, in his opinion, it would be incorrect to make such representations to OWNER. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence, or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in ENGINEER'S opinion to protect OWNER from loss because:

- 14.7.1 the work is defective, or completed Work has been damaged requiring correction or replacement,
- 14.7.2 written claims have been made against OWNER, or liens have been filed in connection with the Work,
- 14.7.3 the Contract Price has been reduced because of Modifications,
- 14.7.4 OWNER has been required to correct defective Work, or complete the Work in accordance with paragraph 13.14,
- 14.7.5 of CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
- 14.7.6 CONTRACTOR'S failure to make payment to Subcontractors, or for labor, materials, or equipment.

SUBSTANTIAL COMPLETION:

- 14.8 When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall, in writing to OWNER and ENGINEER, certify that the entire Work is substantially complete, and request that ENGINEER issue a certificate of substantial completion. Within a reasonable time thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER after conferring with OWNER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving his reasons therefor. If ENGINEER after conferring with OWNER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of substantial completion which shall fix the date of substantial completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which he may make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will, within fourteen days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing stating his reasons therefor. If, after consideration of OWNER'S objections, ENGINEER considers the Work substantially complete, ENGINEER will, within said fourteen days, execute and deliver to OWNER and CONTRACTOR a definitive certificate of substantial completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as he believes justified after consideration of any objections from OWNER. At the time of delivery of tentative certificate of substantial completion, OWNER and CONTRACTOR will mutually agree upon the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, and insurance.
- 14.9 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of substantial completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

PARTIAL UTILIZATION:

14.10 Use by OWNER of completed portions of the Work may be accomplished prior to substantial completion of all the Work subject to the following:

14.10.1 OWNER, at any time, may request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete, and request ENGINEER to issue a certificate of substantial completion for that part of the Work. Within a reasonable time thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER after conferring with OWNER considers that part of the Work to be substantially complete, ENGINEER will execute, and deliver to OWNER and CONTRACTOR, a certificate to that effect, fixing the date of substantial completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of substantial completion as to part of the Work, ENGINEER after conferring with OWNER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, and insurance for that part of the Work which shall become binding upon OWNER and CONTRACTOR at the time of issuing the definitive certificate of substantial completion as to that part of the Work, unless OWNER and CONTRACTOR shall have otherwise agreed in writing. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.10.2 In lieu of the issuance of a certificate of substantial completion as to part of the work, OWNER may take over operation of a facility constituting part of the Work, whether or not it is substantially complete, if such facility is functionally and separately usable; provided that prior to any such takeover, OWNER and CONTRACTOR have agreed as to the division of responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities, and insurance with respect to such facility.

14.10.3 No occupancy of part of the Work, or taking over of operations of a facility will be accomplished before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.

FINAL INSPECTION:

14.11 Upon written notice from CONTRACTOR that the Work is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR, and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

FINAL APPLICATION FOR PAYMENT:

- 14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and OWNER, and delivered all maintenance and operating instructions, schedules, guarantees, bonds, warranties, certificates of inspection, marked-up record documents, three (3) complete bound sets of required operations and maintenance manuals and instructions, two (2) sets of as built drawings, to the extent not already furnished, one (1) copy of all corrected Shop Drawings, satisfactory evidence that all payroll, material bills and other indebtedness with the Work have been paid or otherwise satisfied, consent of surety to final payment and other documents, all as required by the Contract Documents, and after ENGINEER and OWNER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.14), CONTRACTOR may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by all documentation called for in the Contract Documents, and such other data and schedules as ENGINEER and OWNER may reasonably require. Payment shall be processed in accordance with C.R.S. §§ 24-91-103 and 38-26-107. Notwithstanding the foregoing, CONTRACTOR will provide complete and legally effective lien releases or waivers satisfactory to OWNER. In lieu thereof, and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material, and equipment for which lien could be filed, and that all payrolls, material, and equipment bills, and other indebtedness connected with the Work, for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier, or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER.

FINAL COMPLETION AND FINAL PAYMENT AND ACCEPTANCE:

- 14.13 If, after conferring with OWNER and on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final application for payment and accompanying documentation, all as required by Contract Documents, ENGINEER and OWNER are satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, ENGINEER will, within ten days after receipt of the final application for payment, indicate in writing his recommendation of payment, and present the application to OWNER for payment. Thereupon, ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections, and resubmit the application. If the application and accompanying documentation are appropriate as to form and substance, OWNER shall, after receipt thereof, pay CONTRACTOR in accordance with the payment procedures set forth in the Agreement, the amount recommended by ENGINEER.

CONTRACTOR'S CONTINUING OBLIGATION:

- 14.14 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of substantial completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the

Work or any part thereof by OWNER, nor any act of acceptance by OWNER, nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

WAIVER OF CLAIMS:

14.15 The making and acceptance of final payment shall constitute:

14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

OWNER MAY SUSPEND WORK:

15.1 OWNER may, at any time and without cause, suspend the Work, or any portion thereof, for a period of not more than ninety days, by notice in writing to CONTRACTOR and ENGINEER which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR may, at the OWNER'S sole discretion, 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 therefor as provided in Articles 11 and 12.

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

15.2.1 if CONTRACTOR is adjudged bankrupt or insolvent,

15.2.2 if CONTRACTOR makes a general assignment for the benefit of creditors,

15.2.3 if a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property,

15.2.4 if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,

15.2.5 if CONTRACTOR repeatedly fails to supply sufficient skilled workmen, or suitable materials or equipment,

15.2.6 if CONTRACTOR repeatedly fails to make prompt payments to Subcontractors, or for labor, materials, or equipment,

- 15.2.7 if CONTRACTOR disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction,
- 15.2.8 if CONTRACTOR disregards the authority of ENGINEER, or
- 15.2.9 if CONTRACTOR otherwise violates, in any substantial way, any provisions of the Contract Documents,

OWNER may, after giving CONTRACTOR and his surety seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site, and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment, and machinery at the site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site, or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER shall be verified by ENGINEER and incorporated in a change order, but in finishing the Work, OWNER shall not be required to obtain the lowest figure for the Work performed.

- 15.3 Where CONTRACTOR'S services have been so terminated by OWNER, the termination shall not affect any rights of OWNER against CONTRACTOR then existing, or which may thereafter accrue. Any retention or payment of monies due CONTRACTOR by OWNER will not release CONTRACTOR from liability.
- 15.4 Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and expenses sustained through the date of termination.

CONTRACTOR MAY STOP WORK OR TERMINATE:

- 15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER, or under an order of court or other public authority, or ENGINEER fails to act on any application for payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed through the date of termination.

ARTICLE 16 – MISCELLANEOUS

GIVING NOTICE:

- 16.1 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 the giver of the notice.

COMPUTATION OF TIME:

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

GENERAL:

- 16.3 Should OWNER or CONTRACTOR suffer injury or damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents, or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observances of such injury or damage.
- 16.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular, but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by paragraphs 6.38, 13.1, 13.11, 13.14, 14.3, and 15.2, and all of the rights and remedies available to OWNER and ENGINEER thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligations, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.