

DOCUMENT NUMBER 00700
GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

USE NOTES

The following text highlights the latest changes to Section 00700 General Conditions. Division 0 and 1 Guide Specifications incorporate the updated changes and cross references to Section 00700.

Article 1: Definitions

1.2: “Contract Documents” do not include the bid. Transfer the numbers from the bid to the Agreement Form 00500.

Article 4: Bonds and Insurance

4.1: **Performance and Payment Bonds.** The length of time for each bond to remain in effect has changed and should be reviewed by counsel for the Client. The Surety for each bond must be on the U.S. Treasury’s Circular 570, which is accessible on the Internet. The Client should verify each surety is acceptable.

4.3: **Insurance Requirements.** These requirements are new, detailed and extensive. They are important protection for the Client and Kennedy/Jenks. Specific ISO (Insurance Services Office) Endorsement forms are required. Newer versions are not acceptable as they often limit the extent of coverage.

4.4: **Certificates of Insurance.** Certificates of Insurance and endorsements to the Contractor’s policies are required to be provided to the Owner and Engineer before the work begins and along with the Application for Final Payment.

Article 5 – Contractor

Contractor’s Construction Schedule

5.16: Detailed CPM schedules are required.

5.17: Float has been allocated in the Agreement. The Contractor waives all claims for compensation due to delays, interference or acceleration. The Contractor is entitled only to an extension of time of the contract. Counsel for the Owner should review this provision because many states limit its enforceability.

5.32: **Indemnification.** This changed provision provides more protection to the Owner and Kennedy/Jenks than the prior provision.

Article 7 Administration of the Contract

7.8: **Requests for Information (RFI) and Responses:** This is a new form, GC-1 that the contractor must use to request information and we should use to respond. We no longer use “clarifications” as a response to a RFI because in most instances there is not an ambiguity in the documents, just an inability of the Contractor to find the answer.

Article 8 – Submittals

8.3: Proposed Equivalent Form, GC-3 must be used by the Contractor as it contains a number of certifications and specific information that we must rely upon in considering the request.

8.8: **Intent of Contractor's Review:** Submittals must be on the Submittal Form, GC-2, as it contains a number of certifications.

Article 9 – Changes in the Work

9.4: **Change Orders.** This provision has been modified to include a waiver of known and **unknown claims** by the **OWNER** and Contractor, unless expressly reserved. The reservation should be on the Change Order. This should help to limit the Contractor's further requests for time or money after the Change Order has been executed.

Article 10 – Claims and Disputes

10.6: **Mediation.** Should direct negotiations not resolve a dispute, controversy or claim, then Mediation is the next step before a lawsuit or arbitration.

Article 13 – Payment and Completion

13.1: **Schedule of Values.** This submittal form is left to the discretion of the Engineer, but should be detailed enough to evaluate Applications for Payment which should use the same schedules and values (but not the same form).

13.2: **Application for Payment.** The Form, GC-4 and the timing has changed. The Form should be used as it contains certifications by the Contractor and a Recommendation (not a certification) by the Engineer. GC-4 is a Microsoft Excel Template.

13.4: **Engineer's Recommendation for Payment.** We do not certify Applications, we make recommendations to Owners. Owners may withhold additional amounts based upon legal, insurance or other considerations. The timing has changed for issuance of our recommendations.

13.9: **Contractor's List of Deficiencies:** Previously known as a Punch List, the Contractor now prepares it and we review and modify it as necessary. The sequence of its preparation, our Semi-Final Inspection, and Final Inspection has been modified and is important. These provisions place upon the Contractor the responsibility to determine substantial completion before we go to the site, otherwise the Contractor will pay for our unnecessary site visits.

DOCUMENT NUMBER 00700
GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS	1	ARTICLE 6 - OWNER	9
ARTICLE 2 - CONTRACT DOCUMENTS	1	Owner's Right to Perform Work and Award	
Contract Relationships	1	Separate Contracts	9
Correlation, Intent	1	Mutual Responsibility	9
Order of Precedence	2	Owner's Right to Stop the Work	9
Use of Contract Documents	2	Owner's Right to Carry Out The Work or Correct	
ARTICLE 3 - LAND, EXISTING CONDITIONS,		Defective Work During Construction	9
LAYOUTS	2	ARTICLE 7 - ADMINISTRATION OF THE	
Land	2	CONTRACT	9
Existing Conditions	2	Communications	10
Subsurface Soil Conditions	2	Requests for Information and Responses	10
Existing Utilities and Underground Facilities	2	ARTICLE 8 - SUBMITTALS	10
Existing Structures	2	Definitions	10
Contractor Responsible for Damage	3	Specified Items, Proposed Equivalents	
Differing Conditions	3	("Or Equal")	11
Contractor Responsible for Safety Precautions	3	Shop Drawings, Product Data, Samples and	
Reference Points, Layout	3	Proposed Equivalents	11
ARTICLE 4 - BONDS AND INSURANCE	3	Intent of Contractor's Review	11
Performance and Payment Bonds	3	Intent and Limitations on Engineer's Review	12
Insurance Requirements	4	ARTICLE 9 - CHANGES IN THE WORK	13
Certificates of Insurance	5	Changes	13
Property Insurance: Adjustment of Loss	5	Requests for Quotation	13
ARTICLE 5 - CONTRACTOR	5	Change Orders	13
Supervision	5	Work Directive Change	13
Contractor Responsible for Means and Methods	5	Information, Interpretations and Minor Changes	13
Labor, Material and Equipment	6	Determining Cost of Changes	14
Subcontractors	6	Change in Contract Time Due to Changes in	
Taxes, Permits, Fees and Notices	6	the Work	14
Patents	6	ARTICLE 10 - CLAIMS AND DISPUTES	14
Documents at the Site, Record Drawings	6	Claims	14
Review of Contract Documents and Field		Engineer's Decisions	15
Conditions	7	Time Limits for Submitting and Deciding Claims	15
Contractor's Construction Schedule	7	Mediation	15
Safety of Persons and Protection of Property	7	Work Continued During Disputes	15
Hazardous Materials	8		
Owner's Indemnification for Hazardous Materials	8		
Emergencies	8		
Indemnification	8		

ARTICLE 11 - CONTRACT TIME AND DELAYS.....15

- Definitions15
- Computation of Time16
- Contract Time16
- Damages for Late Completion16
- Commencing Work.....16
- Accelerated Work If Required to Meet Schedule ...16
- Excusable Delay16
- Compensable Delays16

ARTICLE 12 - INSPECTION, DEFECTIVE WORK, GUARANTEE.....17

- Defective Work.....17
- Access to Work and Notice17
- Tests and Inspections.....17
- Reinspection17
- Uncovering Work17
- Correction of Defective Work17
- Acceptance or Use of Defective Work17
- Guarantee Period18
- Owner's Right to Correct Defective Work During Guarantee Period18
- Contractor's Liability for Defective Work Not Limited by Guarantee18

ARTICLE 13 - PAYMENT AND COMPLETION18

- Schedule of Values18
- Application for Payment18
- Payment for Items Delivered But Not Installed19
- Engineer's Recommendation for Payment19
- Completion and Acceptance19
- Owner's Right to Partial Use.....20
- Contractor's List of Deficiencies.....20
- Semi-Final Inspection, Substantial Completion.....20
- Final Inspection, Final Completion.....20
- Final Payment21
- Waiver of Claims.....21

ARTICLE 14 - TERMINATION21

- Termination by the Owner for Cause.....21
- Suspension by the Owner for Convenience22
- Termination by the Owner for Convenience.....22
- Contractor May Stop Work or Terminate22

ARTICLE 15 - MISCELLANEOUS.....22

- Method for Giving Notices22
- Rights and Remedies22
- Failure to Act Not a Waiver of Rights22
- Severability of Provisions22
- Right to Audit23
- Governing Law23

DOCUMENT NUMBER 00700
GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1 - DEFINITIONS

1.1 The term "Contract" refers to a single identified portion of the construction which may be the whole or a part of the Project. The Project is the total construction and consists of one or more Contracts performed by the same or separate contractors or by the Owner. A single set of drawings, specifications and contract conditions may include more than one Contract; when combined with the Agreement for an individual Contract they become the Contract Documents for that Contract. The construction performed under a set of Contract Documents is the Work required by an individual Contract.

1.2 The "Contract Documents" consist of the Agreement, General and Supplementary Conditions, Drawings, Specifications, Addenda issued prior to executing the Agreement and modifications issued after executing the Agreement.

1.3 The term "Contract Price" refers to the total monies payable to the Contractor for completion of the Work in accordance with the Contract Documents.

1.4 The term "Design Engineer" refers to the firm that prepared the Contract Documents - Kennedy/Jenks Consultants - and includes all of their officers, directors, shareholders, employees and consultants.

1.5 The term "Drawings" refers to the graphic and pictorial portion of the Contract Documents, showing the design, location, dimensions, details, scope and character of the Work. Drawings may include plans, elevations, sections, schedules, details and diagrams.

The term Plans, Plan, Drawing and similar terms shall have the same meaning as the term "Drawings."

1.6 The term "Engineer" refers to the person or entity designated by the Owner to provide administration of the Contract.

1.7 The term "Notice to Proceed" refers to a written notice by the Owner to the Contractor authorizing it to proceed with the Work and establishing the date of commencement from which the Contract Time is measured.

1.8 The term "Owner" is the person or entity referred to in the Agreement and includes all of its officers, employees, and consultants.

1.9 The term "Work" means the entire construction required by the Contract Documents completed or in progress and includes all labor, materials, equipment and services necessary to fulfill the Contractor's obligations. The Work does not include the Contractor's tools, equipment, scaffolding, shoring, barricades, guardrails or any other temporary construction or safety devices employed by the Contractor to complete the Work.

1.10 Definitions of other terms are included at the beginning of each Article or in Division 1 Section 01010.

ARTICLE 2 - CONTRACT DOCUMENTS

Contract Relationships

2.1 The Contract Documents constitute the entire Agreement between the Owner and the Contractor for the Work and supersede prior agreements written or oral.

2.2 The Contract Documents shall not be construed to create a duty of any kind (1) on behalf of the Design Engineer or the Engineer and toward the Contractor, any subcontractor, worker, or any other party, or (2) on behalf of the Owner and toward any subcontractor, worker, or any other party.

2.3 Provisions in referenced standards, specifications, manuals, publications, installation instructions, operation and maintenance instructions or codes shall not change the duties or responsibilities between any of the parties involved in this work from those described in these General Conditions.

Correlation, Intent

2.4 It is the intent of the Contract Documents to include everything necessary for the proper execution of the Work as a complete functioning facility that serves the intended purpose. The Contractor shall provide all labor, material, equipment and services required by the Contract Documents or that may

reasonably be inferred from the Contract Documents as being required to produce the intended result.

2.5 The Contract Documents are complementary: What is required by one shall be as binding as if required by all. Organization of the Specifications into sections and the arrangement of the Drawings on separate sheets for Mechanical, Electrical, etc. shall not control the Contractor in dividing the Work among subcontractors or among trades.

Order of Precedence

2.6 In case of conflict between different parts of the Contract Documents, the order of precedence shall be as follows:

- .1 Supplementary Conditions take precedence over the General Conditions and the Specifications including Division 1;
- .2 General Conditions take precedence over the Specifications including Division 1;
- .3 Provisions in Division 1 General Requirements apply to all sections of the Specifications.
- .4 Specifications take precedence over the Drawings;
- .5 Stated dimensions take precedence over scaled dimensions;
- .6 Larger scale drawings take precedence over smaller scale drawings;
- .7 Detailed drawings take precedence over general or typical drawings;
- .8 Specific notes on the Drawings take precedence over schedules; and
- .9 Notes, descriptions or schedules take precedence over graphic representations on drawings.
- .10 Higher quality takes precedence over lower quality.
- .11 Greater number, amount or size takes precedence over lesser number, amount or size.

2.7 The Contractor will be furnished 10 complete copies of the Drawings and the Project Manual and may obtain additional copies at their cost of reproduction.

Use of Contract Documents

2.8 The Drawings, Specifications and other documents prepared by the Design Engineer, are instruments of service to which the Design Engineer retains legal title, including copyright rights. These instruments of service shall not be used on other projects or for subsequent changes to this project without the written permission of the Design Engineer.

ARTICLE 3 - LAND, EXISTING CONDITIONS, LAYOUTS

Land

3.1 The Owner shall furnish access to the land on which the Work is to be performed including rights-of-way and easements for access. The Contractor shall confine its operations to the land furnished or to that portion of the land indicated on the Drawings. The Contractor shall provide all other land that it may require.

Existing Conditions

3.2 Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site and has become familiar with existing and local conditions which may affect the Work and has included all costs associated therewith in its Bid.

Subsurface Soil Conditions

3.3 If information on subsurface soil conditions was obtained for design purposes, the Contractor may rely on the boring logs as a representation of soils that existed at the location of the boring at the time the borings were made but may not rely on the interpretations or opinions contained in the report nor on the completeness or adequacy of the information for the Contractor's construction purposes.

Existing Utilities and Underground Facilities

3.4 Information shown with respect to existing concealed or underground utilities and underground facilities is based on data provided by the utility or facility owners or by others. The Contractor may rely on the information shown in the Contract Documents for purposes of establishing the Scope of Work included in the Contract Price but the Owner and the Design Engineer are not responsible for the adequacy or completeness of such information for the Contractor's construction purposes.

Existing Structures

3.5 Information on existing structures and facilities including concealed utilities was obtained from such records as were available from facility owners and not from exhaustive field investigations. The Contractor may rely on technical data for existing structures and facilities including concealed utilities when such data are shown in the Contract Documents but not on the completeness or adequacy of such data for the Contractor's construction purposes.

Contractor Responsible for Damage

- 3.6 The Contractor shall be responsible for:
- .1 verifying the existence and location of all utilities and underground facilities, including the use of potholing, hand excavations and hand demolition;
 - .2 coordinating work with utility and facility owners;
 - .3 protection of concealed and underground utilities and underground facilities from damage;
 - .4 the repair or replacement of utilities or underground facilities damaged by the Contractor's failure to exercise reasonable care; and
 - .5 damage to others due to loss of utility service resulting from the Contractor's operations.

Differing Conditions

3.7 If the Contractor encounters: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character covered by these Contract Documents, (3) material that the Contractor believes may be hazardous waste as defined by law, the Contractor shall immediately report them to the Engineer. If the Engineer determines that conditions encountered are materially different from those indicated in the Contract Documents or ordinarily encountered in work of the character required and that the differing conditions cause a change in the Contractor's cost or time, it will recommend an equitable adjustment in Contract Price and/or Time. The Contractor's failure to notify the Owner of differing conditions that cause a reduction in the Contractor's cost or time shall not affect the Owner's right to make a Claim for adjustment in Contract Price and/or Time. If either the Contractor or the Owner disagrees with the Engineer's recommendation, they may make a Claim under Article 10.

Contractor Responsible for Safety Precautions

3.8 The Contractor shall take all precautions required to protect workers and others from known and unknown or concealed hazards including verifying the location of concealed and underground utilities and underground facilities with utility and facility owners, potholing, hand excavation and hand demolition and shall not rely on the adequacy, accuracy or completeness of information provided in the Contract Documents or elsewhere by the Owner, the Engineer or the Design Engineer. The Contractor shall be solely responsible for and take all responsibility for safety in, on, or about the site.

Reference Points, Layout

3.9 The Owner shall provide reference points to establish property corners, a baseline and an elevation. The Contractor shall protect reference points provided by the Owner and shall reset any that are damaged. The Contractor shall hire a surveyor licensed in the state where the project is being built to reset and document baseline reference points, elevation bench marks and property corners that are damaged.

3.10 The Contractor shall layout the Work from the reference points provided and shall be responsible for accurate location, alignment, elevation and level of the completed Work.

ARTICLE 4 - BONDS AND INSURANCE

Performance and Payment Bonds

4.1 The Contractor shall furnish Performance and Payment Bonds, each in an amount equal to the Contract Price as security for the faithful performance and payment of the Contractor's obligations under the Contract Documents. The Payment Bond shall remain in effect for at least two (2) years after final acceptance. The Performance Bond shall remain in force the greater of: (a) four (4) years after final completion and final acceptance of all work, or (b) until the expiration of all Warranties and Guarantees as required by the Contract Documents. All Bonds shall be in the forms prescribed by law and by the Contract Documents and be executed by Sureties named in the current list of "Certified Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds or Certified Reinsurer Companies Holding Certificates Of Authority As Acceptable Reinsuring Companies" published in Circular 570 (most recent amendment) by the Audit Staff Bureau of Accounts, U.S. Treasury Department (www.fms.treas.gov/c570/index.html) and is admitted to issue bonds in the states in which the Project is located and all Work is performed. If the Surety is declared bankrupt or becomes insolvent or its right to do business is terminated by the state where the Work is located or if it ceases to meet the foregoing listing requirement, the Contractor shall provide another Bond meeting the stated requirements. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

4.2 Sureties shall specifically waive all rights of notice of and consent to change, extension of time, alteration or addition to the terms of the Contract. The Contractor shall be responsible for notifying Sureties of all events that may affect them.

Insurance Requirements

4.3 The Contractor shall, at its sole cost, obtain and maintain, in force and effect for the duration of the Contract, including the Guarantee and Warranty periods, insurance of the following types with limits not less than those set forth below, in a company or companies with a Best's rating of no less than A:VII and admitted to issue insurance in the jurisdiction(s) in which all work is to be performed, where the site is located and where any waste is transported or deposited. The Contractor shall require compliance with these Insurance Requirements by its lower tier subcontractors:

.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory or province having jurisdiction over the Contractor's employees and Employer's Liability Insurance with limits the greater of the statutory requirements, or \$1,000,000 per accident and, for bodily injury by disease, \$1,000,000 per employee. Coverage shall include all work covered under the U.S. Longshoreman's and Harbor Workers' Compensation Act and Jones Act. The Contractor shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation insurance, or otherwise attempt to opt out of the statutory Workers' Compensation system. This insurance shall contain a waiver of subrogation against the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants.

.2 Comprehensive General Liability Insurance (Occurrence Form) ISO Form CG 00 01 10 93 with a full defense and indemnity, and unless modified in the Supplementary Conditions, shall include:

(a) a minimum combined single limit of liability of \$3,000,000 or the limits required by law, whichever is greater for each occurrence for bodily injury and property damage;

(b) a minimum limit of liability of \$3,000,000 each person for personal and advertising injury liability;

(c) a minimum limit of liability of \$3,000,000 each occurrence for products/completed operations liability. The products/completed operations liability shall be maintained in full force and effect for not less than 10 years following completion of any of the Contractor's work;

(d) a general aggregate limit of not less than \$3,000,000, which shall be provided on a per project basis by means of ISO Endorsement CG 25 03 11 85;

(e) an endorsement that names the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants as additional insureds. Such endorsement shall be made upon an ISO Endorsement CG 20 10 11 85, Additional Insured -

Owners, Lessees or Contractor (Form B) and shall state "insurance is primary and all other insurance shall be noncontributory" and shall waive all rights of subrogation against the additional insureds;

(f) XCU coverage for claims arising from explosion, collapse and underground damage;

(g) Pollution Impairment Liability coverage of not less than \$1,000,000;

(h) Contractual liability coverage for all oral and written contracts including the indemnity provisions contained herein

(i) Deductibles shall not exceed \$5,000 per occurrence and shall be the sole responsibility of the Contractor;

(j) Coverage for Cross Liability and coverage for Severability of Interest shall be included;

(k) Claims made policies are not acceptable;

(l) Coverage for Work performed on or within 50 feet of a railroad, by deletion of any limitation or exclusion of coverage on or within 50 feet of a railroad or by a Railroad Protective Liability policy which complies with Article 4.3.2 (a), (d), (e), and (h)-(k).

.3 Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$3,000,000 per occurrence, and shall include:

(a) An endorsement that names the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants as additional insureds, states such "insurance is primary and all other insurance shall be noncontributory", and waives all rights of subrogation against the additional insureds;

(b) Coverage for Cross Liability and coverage for Severability of Interest;

.4 Property Insurance shall be on an all-risk policy form and shall include:

(a) A minimum limit of liability in the amount of the initial Contract Price as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles;

(b) The interests of the Owner, the Contractor, the Engineer, and the Design Engineer and each of their officers, employees, agents, consultants, and all tiers of subcontractors, all of whom shall be listed as insureds or additional insureds and the policy shall, by endorsement, waive all rights of subrogation against the insureds and additional insureds and the endorsement shall state: "Subrogation: This insurance shall not be invalidated should the named Insured waive in writing

prior to a loss, any right of recovery against any person for loss occurring to the property described.”;

(c) Coverage for the Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, the Contractor shall bear all reasonable costs properly attributable thereto;

(d) Coverage against the perils of fire and extended coverage and all physical loss or damage including, without limitation or duplication of coverage:

(i) lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike, civil commotion, aircraft and vehicles;

(ii) theft, vandalism, malicious mischief, and water damage;

(iii) collapse, flood including tidal waves or overflow from bodies of water, landslide, water pressure or earth movement and earthquake;

(iv) removal of debris resulting from an insured loss and demolition occasioned by enforcement of any applicable legal requirements;

(v) falsework, temporary buildings and safety devices used by the Contractor to perform the Work;

(vi) portions of the Work stored on and off the site and in transit when such portions of the Work are included in an Application for Payment (including Inland Marine coverage and Installation and Equipment Floater coverage as applicable);

(vii) and shall cover compensation for the services of the Design Engineer and the Engineer required as a result of the insured loss.

(viii) flood and tidal wave insurance coverage shall be for the maximum percentage of the Contract Price permitted by law.

(e) Remaining in full force and effect until the Final Payment has been made to the Contractor. The property insurance policy shall be endorsed to allow for partial use or occupancy by the Owner without permitting a cancellation or lapse of insurance coverage;

(f) Deductibles shall not exceed \$5,000 per occurrence with a deductible aggregate of \$5,000. The Contractor shall pay for deductible losses at no cost to any other insured or additional insured.

.5 Boiler and Machinery Insurance shall be provided as required by the Supplementary Conditions or by law.

Certificates of Insurance

4.4 Prior to beginning any Work, the Contractor shall file with the Owner, Design Engineer and Engineer, Certificates of Insurance in a form satisfactory to Owner (ACCORD form) along with a copy of all endorsements as required in Article 4.3. The certificates shall name

each additional insured required by these General Conditions, shall state "insurance is primary and all other insurance shall be noncontributory", shall waive all rights of subrogation against the additional insureds; and shall also contain a provision that the Owner, Design Engineer and Engineer shall be notified in writing 30 days before the policies may be canceled or allowed to expire or any reduction in coverage. An additional certificate shall be submitted with the final Application for Payment showing required continuation of coverage beyond the Final Payment.

Property Insurance: Adjustment of Loss

4.5 A loss insured under the Contractor's property insurance shall be adjusted with the Contractor and made payable to the Contractor as fiduciary for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Contractor shall deposit the insurance proceeds in a separate account, and shall distribute payment to the parties in proportion to their cost for repairing or replacing the damaged Work. The Contractor shall provide a complete audited accounting of the distribution of insurance proceeds to all parties of interest.

ARTICLE 5 - CONTRACTOR

5.1 The Contractor shall be skilled in the type of work required by the Contract Documents and shall be licensed in accordance with applicable law. The Contractor shall perform at least ten percent of the dollar value of the Work using personnel on its own payroll.

Supervision

5.2 The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall employ a competent superintendent to represent the Contractor at the site at all times work is being performed. The Superintendent shall not be replaced without reasonable cause and notice to the Engineer. Communications given to the Superintendent shall be as binding as if given to the Contractor.

Contractor Responsible for Means and Methods

5.3 The Contractor shall be solely and completely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety and for coordinating all portions of the Work under the Contract Documents. The Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants shall not be

responsible for any construction means, methods, techniques, sequences, nor for safety in, on or about the site, nor for coordinating any part of the Work.

Labor, Material and Equipment

5.4 The Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, communications, and other facilities and services necessary for the proper execution and completion of the Work.

5.5 The Contractor warrants to the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants that materials and equipment furnished under the Contract will be of good quality and new unless otherwise specified, that the Work will be free from defects, that all material, equipment, hardware, software and firmware products provided to the Project will be "Year 2000 Compliant" defined in Article 8.8, and that the Work will conform with the requirements of the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Work not conforming to these requirements, including Proposed Equivalents not Favorably Reviewed, may be considered defective. The Contractor's warranty excludes remedy for damage caused by the Owner's abuse, modification, improper maintenance, improper operation, or normal wear.

5.6 The Contractor shall enforce strict discipline and good order among persons performing the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.7 The Contractor shall be responsible to the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

Subcontractors

5.8 Unless listing subcontractors at the time of bidding is required by the bidding documents, the Contractor shall furnish a list of all subcontractors whose work amounts to one-half percent or more of the Contract Price prior to beginning construction. The Contractor shall not contract with any subcontractor to whom the Owner or the Engineer has made reasonable and timely objection.

5.9 Contracts between the Contractor and subcontractors shall (1) require each subcontractor to be bound to the Contractor by the terms of these Contract Documents, and to assume toward the Contractor, the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants all the obligations and responsibilities including insurance requirements which the Contractor, by these Contract Documents, assumes toward the Owner, the Design Engineer and the Engineer, and (2) at the Owner's option, provide for the assignment of subcontracts to the Owner in the event of Termination of the Contract.

Taxes, Permits, Fees and Notices

5.10 The Contractor shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received. The Contractor shall secure and pay for the building permit (less the Plan Review fee) and other permits and governmental fees, licenses and government required inspections necessary for proper execution and completion of the Work including utility connection fees. The Owner will submit the Drawings, Specifications and other required data to the Building Official prior to bidding and will pay for the Plan Review fee. The Owner will pay capital cost assessments such as plant investment fees required by utility owners.

5.11 The Contractor shall give all notices and shall comply with all laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on furnishing and performing the Work.

Patents

5.12 The Contractor shall include in its bid and shall pay royalties and license fees required for the use of all patents. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, the Engineer, and the Design Engineer and each of their officers, employees, agents and consultants harmless from loss on the account thereof.

Documents at the Site, Record Drawings

5.13 The Contractor shall keep a complete set of Contract Documents including all modifications and all favorably reviewed submittals at the site. The Contractor shall prepare Record Drawings by neatly adding the following information in ink at least once a week to a set of Contract Drawings: (1) references to Contract modifications including Responses to Request For Information, minor changes and Change Orders; (2) as-built work that differs from work shown on the Contract Drawings; and (3) the dimensioned, as-

installed location of major underground and concealed utilities, conduits, piping, tanks, facilities and similar items. Record Drawings shall be made on a clean copy of the Contract Drawings furnished under General Conditions paragraph 2.7 and not used for any other purposes. The Contractor shall make Record Drawings available to the Engineer to verify progress. The Contractor shall submit and obtain favorable review of the Record Drawings prior to Final Acceptance.

Review of Contract Documents and Field Conditions

5.14 Before starting work, the Contractor shall carefully study and compare the Contract Documents with each other and with existing site conditions and field measurements. The Contractor shall immediately report any discovered deficiencies including code violations to the Engineer, in writing. The Contractor is not responsible for finding all deficiencies but will be held responsible for construction required to correct deficiencies or code violations that the Contractor had knowledge of or should reasonably have had knowledge of and did not report to the Engineer in writing.

Contractor's Construction Schedule

5.15 Within 10 days after the date in the Notice to Proceed, Contractor shall submit a temporary construction schedule covering the first 60 days of the Contract Time. The submittal shall be graphic and in electronic form (floppy discs or CD-ROM).

5.16 Within 30 days after beginning construction, the Contractor shall prepare and submit for the Owner's and the Engineer's information a construction schedule for the Work. Unless a specific type of schedule is specified in Division One, the form of schedule may be selected by the Contractor but the schedule shall show the beginning and ending date for each major construction task by each trade and the interdependencies between tasks, and shall identify the critical sequence of tasks (or "Critical Path") that determines the shortest time required to complete the Work. The schedule shall reflect input from the Contractor's subcontractors and suppliers, shall include an allowance for normal unfavorable weather and enough float time to accomplish all clarifications, requests for information or changes required in the Contract Documents, and shall not exceed time limits specified in the Contract Documents. If the Contractor's schedule shows a shorter construction period than provided in the Contract Documents, the Contractor's schedule shall be a Critical Path Method (CPM) type schedule, shall be prepared in sufficient detail to demonstrate the feasibility of early completion and shall be submitted within 30 days after beginning construction. This CPM schedule shall show all required submittals and dates for ordering,

shipping and receiving critical materials and equipment. Contractor's submittals shall be submitted with sufficient time to permit 30 days for a response and not impact Contractor's schedule. The submittals shall be graphic and in electronic format (floppy discs or CD-ROM).

5.17 It is agreed that the Contract Price includes the Contractor's office and field overhead, profit and related charges for the full Contract Time. The Contractor may, at its option, complete the Work in a shorter period than the Contract Time but the Contractor may not make a claim for extended overhead or other charges for: (1) delays that extended completion beyond the date planned by the Contractor but not beyond the Contract Time, and (2) delays contemplated by the Contractor and the Owner. All float in the schedule shall first be for the benefit of the Owner, the Engineer, the Design Engineer and then for the benefit of the Contractor. To the fullest extent permitted by law, the Contractor on behalf of itself and its subcontractors, waive any and all claims for damages attributable to delays, interference, or acceleration caused by the Owner, the Engineer, the Design Engineer and each of their officers, employees, agents and consultants and the Contractor and its subcontractors shall be entitled to an extension of the Contract Time as their exclusive remedy.

5.18 The construction schedule shall provide for expeditious and practicable execution of the Work and shall be revised and submitted monthly unless excused by the Engineer in writing. The Contractor shall conform to the most recent schedule.

5.19 The Contractor shall prepare and keep current, for the Engineer's information, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows 30 days for the Engineer's review of each submittals and 30 days for review of each resubmittal.

Safety of Persons and Protection of Property

5.20 The Contractor shall be solely and exclusively responsible for construction safety means and methods and for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Contract.

5.21 The Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

5.22 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

5.23 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, necessary fences and other safeguards for safety and protection of persons and property on and off the site and shall: (1) post danger signs and other warnings against hazards, (2) promulgate safety regulations, and (3) notify owners and users of adjacent sites and utilities when the Contractor's operations may affect them.

5.24 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry out such activities under supervision of properly qualified personnel.

5.25 The Contractor shall promptly remedy damage and loss to property that the Contractor is required to protect caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The Contractor shall not be responsible for damage or loss resulting solely from the acts or omissions of the Owner or the Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under the Indemnification clause in this Article 5.

5.26 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

5.27 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required in connection with the Work and shall

send copies of all accident, injury or work-related illness reports and of all notices of unsafe conditions to the Engineer.

5.28 The Contractor shall not load or permit heavy weights to be placed on any part of the construction or site so as to endanger its safety.

Hazardous Materials

5.29 If the Contractor encounters material on the site which it reasonably believes may contain asbestos, polychlorinated biphenyl (PCB) or other hazardous material, the Contractor shall stop work in the affected area and shall notify the Owner in writing. The Owner shall have the suspected material tested and if found to contain asbestos, PCB or other hazardous material, the Owner shall have the material removed or rendered harmless. Work in the affected area may be resumed when the Owner gives written notice that the material containing asbestos, PCB or other hazardous material has been removed or made harmless. If halting work in the affected area impacts the Contractor's critical path for construction, the delay will be regarded as an Excusable Delay and the Contract Time will be extended.

Owner's Indemnification for Hazardous Materials

5.30 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Engineer, Design Engineer, and each of their consultants, agents, employees, officers, and shareholders from and against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from work in areas affected by asbestos, polychlorinated biphenyl (PCB) or other hazardous material, the presence and location of which has not been identified by the Owner in writing.

Emergencies

5.31 In an emergency affecting safety of persons or property, the Contractor shall act as required to prevent threatened damage, injury or loss without instruction or authorization from the Owner or Engineer. Additional compensation or extension of time claimed by the Contractor on account of such an emergency shall be determined as provided under Article 10.

Indemnification

5.32 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Engineer and the Design Engineer and each

of their agents, consultants, officers, employees, and shareholders from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, caused in whole or in part, or arising out of, connected with, or resulting from the performance of the Work, regardless of whether or not such liability, claim, damage, loss or expense was caused in part by any negligent act or omissions, whether active or passive, by a party indemnified hereunder. The Contractor stipulates that this provision has been negotiated in accordance with applicable law to be fully enforceable.

5.33 The obligation of the Contractor under this indemnity and hold harmless agreement shall not apply to liability for damages arising from the sole negligence or willful misconduct of the Owner, the Engineer, or the Design Engineer or their agents, consultants, employees, officers, shareholders or independent contractors (other than the Contractor).

5.34 The Contractor's liability to the Owner, Engineer and Design Engineer under this Indemnification Clause shall not be limited by any legal limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

5.35 The Contractor's liability insurance shall provide coverage for the Contractor's obligations under this Indemnification Clause in accordance with paragraph 4.3.

ARTICLE 6 - OWNER

Owner's Right to Perform Work and Award Separate Contracts

6.1 The Owner reserves the right to perform construction within, related to or adjacent to the Work as a separate activity using its own workers or by contracts with separate contractors under contract conditions similar to those in Article 4 with respect to insurance and subrogation. The Owner shall provide coordination of these separate activities with the Work of the Contractor.

6.2 The Contractor shall cooperate with the Owner's separate contractors and workers and shall afford them access to their work areas and space to store materials, tools and equipment. The Contractor shall adjust its construction schedule to reflect agreed upon interfaces with the Owner's separate activities.

Mutual Responsibility

6.3 If part of the Contractor's work depends on or must interface with work performed by the Owner as a separate activity, the Contractor shall (1) cooperate with

the Owner's coordination of the work efforts, (2) inspect work provided by the Owner's separate activities for compatibility with work provided or intended to be provided by the separate contractor, and (3) report to the Owner and the Engineer, prior to proceeding with work that may be affected, any deficiencies in work planned or executed by the Owner that would render it incompatible with work planned or completed by the separate contractor.

6.4 If the Contractor is caused delay or additional cost because of the Owner's separate activities, it may make a Claim as provided under Article 10.

Owner's Right to Stop the Work

6.5 If the Contractor fails to correct defective work or continues to perform defective work, the Owner may issue a signed order directing the Contractor to stop the Work or a portion of the Work until the defective work has been corrected. This right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

Owner's Right to Carry Out The Work or Correct Defective Work During Construction

6.6 If the Contractor fails to remove and replace or correct Defective Work, or if the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to cure the defect, fault or neglect within 7 days after receipt of written notice from the Owner, the Owner may issue a second notice warning the Contractor that if it does not correct the defect, fault or neglect within the second 7-day period the Owner will, without prejudice to other remedies the Owner may have, correct such deficiencies. In which case, the Owner will deduct the cost of correcting such deficiencies, including compensation for any additional engineering services required, from payments due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Owner's right to correct Defective Work during the Guarantee Period is covered in Article 12.

ARTICLE 7 - ADMINISTRATION OF THE CONTRACT

7.1 At the Owner's option, either the Owner or the Engineer designated by the Owner will provide administration of the Contract and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the Guarantee Period. If an

engineer other than the Design Engineer is appointed to be the Engineer to administer the Contract during construction, the duties and responsibilities of the Engineer and the Design Engineer during construction will be defined in the Supplementary Conditions, in Division One of the Specifications or in a modification to the Contract.

7.2 The Engineer may visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. The Contractor shall not rely upon the Engineer's site visits nor raise as a defense to any claims of defective work, that the Engineer visited the site or observed the site.

7.3 The Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Article 5. The Engineer shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

7.4 The Engineer shall not have the authority to authorize extra work or to change the Contract Time or Price. The Engineer shall not have the authority to stop the Work. The Engineer's duties, responsibilities and limitations of authority are set forth in the Agreement between the Owner and the Engineer and shall not be modified by any action or inaction of any parties and can only be changed by a fully executed Amendment to the Agreement between the Owner and the Engineer.

7.5 The Engineer will have authority to reject Defective Work. The Engineer will have authority to require additional inspection or testing of the Work whether or not such Work is fabricated, installed or completed. Neither this authority of the Engineer nor a decision not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

7.6 The Owner may arrange for the Engineer to provide a full-time on-site Resident Engineer with additional staff as appropriate. The duties, responsibilities and limitations of authority of the Resident Engineer and

his staff shall be the same as defined for the Engineer in the Agreement between the Owner and the Engineer.

Communications

7.7 Communications between the Owner or the Design Engineer and the Contractor shall be through the Engineer. Communications between the Contractor and the Design Engineer shall be through the Engineer, and communications between the Contractor and the Design Engineer's consultants shall be through the Engineer and the Design Engineer. Communications between the Engineer and the subcontractors shall be through the Contractor.

Requests for Information and Responses

7.8 The Engineer will endeavor to issue Responses to Requests for Information within 30 days of the date a Request for Information is received by the Engineer unless the Engineer requests more information from the Contractor in which case the Response will be issued 20 days after receipt of the additional information. The Contractor shall use the Request for Information form, attached as Exhibit GC-1. The Engineer's Response to a Request for Information shall not authorize a change in Contract Time or Price. If the Contractor disagrees with the Engineer's interpretation of the Contract Documents, it shall notify the Engineer in writing in accordance with Article 9. The Engineer shall not be required to answer Requests for Information when the information is contained in the Contract Documents or when the Request for Information form is incomplete or not used.

ARTICLE 8 - SUBMITTALS

Definitions

8.1 Definition of Terms:

.1 "Shop Drawings" are drawings, diagrams, schedules and other data custom prepared by the Contractor or one of its subcontractors or suppliers to illustrate some portion of the Work.

.2 "Product Data" are catalogue pages, brochures, schedules, performance charts, diagrams, instructions and other information which have been highlighted or marked and certified (if required in the Technical Specifications) by the Contractor to indicate the specific items, including options, that are being submitted for some portion of the work.

.3 A "Proposed Equivalent" is an item proposed for use by the Contractor in lieu of the first specified item and warranted by the Contractor as being at least equal in quality, utility, function and appearance to the first

specified item. The Contractor shall assume all costs and be fully and solely responsible for the Proposed Equivalent.

.4 "Favorable Review" by the Engineer means that based on information submitted by the Contractor and in consideration of the Contractor's warranty required by General Conditions paragraph 8.8 the Contractor may provide the Favorably Reviewed item or work subject to the limitations in General Conditions Article 8, the General Requirements of Division 1, and the Engineer's review comments.

.5 The term "first specified item" or "first named maker" refers to the first product identified in the Specifications by a model number or trade name and/or by a maker's name for a specified item.

Specified Items, Proposed Equivalents ("Or Equal")

8.2 When the first specified item is followed by a second maker's name and "or equal," the Contractor may submit Proposed Equivalent items for the Engineer's review. Proposed Equivalent items that are in the Engineer's judgment equal to the first specified item in quality, utility, and appearance, will be Favorably Reviewed. Where a product description and first maker's name is followed by "or equal" with no second maker's name, it means the specifier knows of no equivalent product and the Contractor may submit Proposed Equivalent products by other makers for review. Where the term "or equal" is omitted, it means that the named item is required to meet the Owner's needs; no products or makers other than those specified will be considered.

8.3 Proposed Equivalent items must be submitted as required for Product Data submittals on the form attached as Exhibit GC-3 and shall include adequate technical information to fully describe the function and quality of the item. Submittals of Proposed Equivalent items that are not made within 35 days of the Notice to Proceed will be rejected unless the Engineer has agreed in writing to a later submittal date and the Contractor agrees to comply with all conditions of the Engineer for the late submittal. If the Contractor's second attempt to obtain Favorable Review of a Proposed Equivalent item is unsuccessful, the Contractor shall submit the first specified item.

8.4 Inclusion of a second maker's name indicates the maker is acceptable but does not necessarily indicate the maker offers a standard product equal to the first specified item.

.1 Items by the second named maker are subject to the same conditions of review and compatibility as other Proposed Equivalent items.

.2 Inclusion of a maker's name and/or model number after a specification description is not a representation

that the maker will furnish an item meeting the Contract requirements at bid time or at time of need. It is the Contractor's sole responsibility to furnish items meeting the Contract requirements.

8.5 Where items are specified with a description followed by a maker's name and trade name or model number, the item shall be provided with all of the custom modifications, special features, accessories and options described even though such things may not normally be included by the maker or provider as part of the model specified. Where there is a conflict between the written description of an item and maker's trade name and/or model number, the written description shall take precedence.

8.6 The design is based on first specified items including all described custom modifications, special features, accessories and options as made by the first named maker. The Contractor shall be responsible for all cost including redesign required to accommodate a Proposed Equivalent item including items by the second named maker.

8.7 The Engineer's review of Proposed Equivalent items is based solely on information provided by the Contractor and on the Contractor's warranty that the proposed item is at least equal in quality, utility, function and appearance to the first specified item. Favorable Review of a Proposed Equivalent item has the same meaning and is subject to the same limitations that apply to the Favorable Review of Product Data and Shop Drawings described in this Article.

Shop Drawings, Product Data, Samples and Proposed Equivalents

Intent of Contractor's Review

8.8 The Contractor shall make required submittals including Shop Drawings, Product Data, Samples and Proposed Equivalent items in time to allow for the Engineer's review and resubmittal, if required, without causing delay to the Work. The Contractor and appropriate subcontractor shall review, stamp, date and sign submittals before sending them to the Engineer. By making such a submittal, the Contractor makes the following warranty and shall include that warranty statement on its letter of transmittal.

"The Contractor warrants:

1. Work or items submitted are complete, accurate and meet the requirements of the Contract Documents, or else any deviations are

identified and described in a separate letter accompanying the submittal form, Exhibit GC-2.

2. Work or items submitted have been coordinated with and meet the requirements of other submittals, field conditions and the Work as a whole and quantities and dimensions are correct.

3. Proposed Equivalent items are at least equal in quality, utility and appearance to the first specified item, or else any deviations are identified in a separate letter accompanying the submittal form, Exhibit GC-3.

4. Adjustments to other work required to accommodate Proposed Equivalent items including second named items have been delineated on the submittal and will be made at the Contractor's expense.

5. This submittal includes all items needed for a particular specification section or assembly for which submittals are required.

6. And represents that all material, equipment, hardware, software and firmware product provided to the Project will be "Year 2000 Compliant". Year 2000 Compliant products will perform without error, loss of data or loss of functionality arising from any failure to process, calculate, compare or sequence data accurately. In addition, Year 2000 Compliant products and/or services will not cause any associated products or systems in which they may be used to fail in any of the ways described above. This Year 2000 Compliant Warranty will remain in effect through January 1, 2034, not withstanding any other warranty period specified in the Contract Documents."

Intent and Limitations on Engineer's Review

8.9 The Engineer's review of the Contractor's submittals is done solely for the Engineer's and Owner's benefit. The Contractor agrees that the Engineer has no duty to the Contractor or any of its subcontractors or suppliers for the accuracy, completeness or adequacy of the Engineer's review of its submittals.

8.10 The Engineer's review of submittals is for compliance with the design intent and requirements of the Contract Documents and is based solely on information provided by the Contractor and on the Contractor's warranty that the work or items submitted meet the requirements of the Contract Documents, and the Work as a whole. If later information reveals that work or items submitted or furnished do not meet the requirements of the Contract Documents or the Work as a whole, the Engineer's Favorable Review shall be void and the items or work shall be considered Defective. The Engineer's

Favorable Review shall not include an examination of methods or means of construction or required safety precautions. The Engineer's Favorable Review: (1) shall not include a review of quantities or dimensions, (2) shall not relieve the Contractor from responsibility for errors or omissions in submittals, (3) shall not relieve the Contractor from responsibility for complying with the requirements of the Contract Documents, (4) shall not constitute a Change Order, and (5) shall not constitute final acceptance of a product, item or portion of the Work.

8.11 The Engineer's Favorable Review of submittals shall not relieve the Contractor from responsibility for deviations from the requirements of the Contract Documents unless the deviations are specifically called to the Engineer's attention in a separate letter accompanying the submittal form, Exhibit GC-2, and the Engineer favorably reviews the specific deviations in writing.

8.12 The Engineer's Favorable Review of a re-submittal does not include a review of changes made by the Contractor to a previous submittal that were not requested by the Engineer unless the Contractor specifically calls the Engineer's attention to the non-requested changes, in a separate letter accompanying the resubmittal of form Exhibit GC-2.

8.13 Where performance type specifications are used or where pre-engineered or Contractor designed systems, elements, equipment or components are called for, the Owner, the Design Engineer and the Engineer shall have the right to rely on the Contractor's design. Favorable Review of the Contractor's design submittal shall be limited to acknowledgment that the design was prepared with the intent of meeting the specified performance criteria, but the Engineer's review shall not constitute a review of the design itself, of the designer's calculations, or of the effectiveness of the design in actually satisfying the specified criteria.

8.14 The Contractor shall allow 30 days for the Engineer's review of each submittal and 30 days for each resubmittal unless a different period is specified by the Engineer in writing. If the Engineer requests additional information or clarification of a submittal, the 30 days shall be measured from the date the additional information or clarification is received. If the Contractor requires more than two submittals to obtain the Engineer's Favorable Review, the Contractor shall compensate the Owner for the cost of the Engineer's additional review time. The Contractor shall not perform work for which reviewed submittals are

required without obtaining Favorable Review of submittals.

8.15 Submittals required for the Owner's or Engineer's information and on which the Engineer shall not be expected to take responsive action are identified in the Contract Documents.

ARTICLE 9 - CHANGES IN THE WORK

Changes

9.1 The Owner may order changes in the Work after executing the Agreement by issuing a written Change Order or Work Directive Change.

9.2 The Contractor expressly agrees that it shall not consider any order, instruction, Clarification, Response to a Request for Information or any other communication either written or oral given intentionally or unintentionally by the Engineer, Owner or any other person as authorization or direction to do work that would cause a change in Contract Time or Price unless it is a Change Order or Work Directive Change signed by the Owner.

Requests for Quotation

9.3 If a change involving Contract Price or Time is being considered, the Engineer will issue a Request for Quotation describing the proposed change. The Contractor shall submit a quotation promptly so not to delay or interfere with the progress of the Work, in accordance with the requirements for determining the cost of changes described in this Article.

Change Orders

9.4 If the Owner and the Contractor agree on the change in Price and Time for a proposed change, a Change Order will be issued and signed by the Engineer, Contractor and the Owner. An executed Change Order shall be conclusive and final settlement of the change in Contract Time and Price for the work covered by the Change Order including the effect of the change on all other portions of the work completed or not and shall include compensation for all related claims for disruption, impact, delay or extended overhead, if any, that may result from the change. Implied in every Change Order, unless expressly reserved by the Owner or Contractor, is a waiver of all known and unknown claims arising out of the Change Order, including a waiver of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect which provides as follows:

"GENERAL RELEASE CLAIMS EXTINGUISHED.

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor."

9.5 The Owner reserves the right to have changed work performed by a separate contractor or its own workers if the Contractor and the Owner cannot agree on the change in Price and Time required.

Work Directive Change

9.6 If the Owner and the Contractor have not agreed on the change in Price or Time required for a proposed change, or if time does not permit preparation of a quotation, the Owner may direct the Contractor to proceed with the work on a cost accounting basis by issuing a Work Directive Change.

9.7 All Work Directive Changes must be signed by the Owner and will state the maximum sum the Owner is obligated to pay.

.1 If the Contractor has agreed to do the work on a cost accounting basis and to complete the work for an amount not to exceed the stated maximum sum, the Contractor shall sign the Work Directive Change.

.2 If the Contractor cannot agree to a maximum sum to complete the work, the Contractor shall not sign the Work Directive Change. In that case the maximum sum shall limit the amount the Owner is obligated to pay to the Contractor but shall not obligate the Contractor to complete the work for that sum.

9.8 When the Owner and the Contractor agree on the change in Price and Time for a Work Directive Change, the Work Directive Change shall be converted into a Change Order.

Information, Interpretations and Minor Changes

9.9 The Engineer has the authority to order minor changes in the Work including interpretations which are consistent with the intent of the Contract Documents. The Engineer does not have authority to order any changes which involve:

- .1 a change in Contract Price, or
- .2 a change in the Contract Time, or
- .3 means, methods, techniques or sequence of Work, or
- .4 safety in, on or about the site.

If the Contractor considers that any minor changes so ordered causes a change in Contract Price or

Time, the Contractor shall notify the Engineer in writing within 15 days of receipt of the order and shall not proceed with the work except in the case of an emergency endangering persons or property.

9.10 If, after reviewing the Contractor's objection to a minor change, the Engineer determines the work is required by the Contract Documents and does not involve a change in Price or Time, the Owner may direct the Contractor, in writing, to proceed with the work. If so directed, the Contractor may (1) accept the Engineer's determination and proceed with the work or (2) give the Engineer written notice 5 days in advance of beginning work stating that it intends to make a claim under Article 10 and will document costs in accordance with paragraphs 9.11 through 9.14.

Determining Cost of Changes

9.11 The Contractor's quotations of cost on proposed changes and cost reported for work performed on a cost accounting basis shall be determined as the sum of the following:

.1 costs of labor including foremen engaged on the work but not of the Superintendent, field engineer, project manager, and other supervisory or support personnel except as provided in paragraph 9.11.5. Labor costs shall include the cost of social security, old age and unemployment insurance, fringe benefits required by labor agreements and workers' or workmen's compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, incorporated in the Work;

.3 rental costs of machinery and equipment, exclusive of portable power or hand tools, supplied by the Contractor or rented from others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the change;

.5 the increased or decreased cost of the Contractor's supervision and field office personnel but only if the change affects the "critical path" of construction activities and requires a change in Contract Time;

.6 the cost of any tier of subcontractors' work computed as required for the Contractor's work. The mark-up charged by a subcontractor for overhead and profit shall be subject to negotiation and shall not exceed 15% for work performed directly by the subcontractor and 5% for work performed by a subcontractor one tier below it, and

.7 for work performed by the Contractor, the mark-up for overhead, profit and all other costs shall be subject to negotiation and shall be the lesser of 15% for work

performed directly by the Contractor and 5% for work performed by a subcontractor or the markup included in escrowed bid documents.

Work shall be done making the most effective use of labor; materials shall be purchased at the lowest available price and all discounts shall be passed on to the Owner; equipment shall be rented at the most favorable rate available for the term of use required.

9.12 When both additions and deletions are related and pertain to the same work item and are included in the same Change Order, the mark-up for overhead and profit shall be computed on the net increase, if any. No deductions for overhead and profit will be made on deductive changes except for deductive changes that materially change the scope of the work or deductive changes issued pursuant to the Owner's right to correct defective work, the Owner's right to remedy the Contractor's default or neglect or the Owner's right to terminate the Contract for cause.

9.13 The Contractor shall keep the Engineer informed as to when and where work is being performed on a cost accounting basis and shall submit complete auditable records of the cost of such work including daily time sheets signed by the Engineer.

9.14 Any work for which the Contractor may wish to make a claim shall be done in accordance with these requirements for work done on a cost accounting basis.

Change in Contract Time Due to Changes in the Work

9.15 If the work required by a Change Order affects the "Critical Path" of construction tasks and is the sole, unavoidable cause for changing the length of time required to complete the Work, the Contract Time will be adjusted accordingly.

ARTICLE 10 - CLAIMS AND DISPUTES

Claims

10.1 A Claim is a written demand by one of the parties to the Contract for an interpretation of Contract terms or an adjustment in Contract conditions including Price or Time and may involve questions of performance under the Contract including acceptability of work, progress of work, the extent to which work has been completed, whether work is included in the Contract, and other matters in question between the Owner and the Contractor.

Engineer's Decisions

10.2 Claims shall be made in writing and shall include complete documentation including:

.1 The Contractor's certification, by its owner or an officer, under penalty of perjury, that (a) the claim is made in good faith, (b) supporting data are accurate and complete to the best of the Contractor's and subcontractor's knowledge and belief, and (c) the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Owner is liable.

.2 Full disclosure of facts and detailed reasons supporting the Claim and citing relevant provisions in the Contract Documents.

.3 Complete documented cost of doing the work for which it is making a Claim and such cost shall be computed in accordance with General Conditions paragraphs 9.11 through 9.14.

The Engineer, as an arbiter of disputes, will make an initial decision on all Claims made prior to the date the final payment is due including Claims alleging an error or omission by the Engineer. The Engineer's decision will be in writing, will be consistent with the intent of the Contract Documents and will cite the basis on which it is made. The Engineer will endeavor to make decisions that are impartial and will not be liable for results of decisions made in good faith. The Engineer's decision is a condition precedent to a demand by either party that a Claim be settled by litigation, or if agreed to in advance by both parties or if required by law, be settled by mediation or arbitration.

Time Limits for Submitting and Deciding Claims

10.3 The Contractor shall give written notice 5 days prior to beginning any work for which it intends to make a Claim for an increase in Contract Time or Price and expressly waives any right to make a Claim if the required notice is not given. All other Claims must be made within 14 days of the time the condition giving rise to the Claim becomes known to the claimant. The Engineer, as an arbiter of disputes, will issue a written decision on the Claim within 30 days after receipt of the Claim unless additional information is requested from the claimant or the claimant amends the Claim and then a decision will be issued within 30 days after receipt of additional information, or an amended Claim.

10.4 A demand to appeal the Engineer's decision and settle a Claim by litigation, mediation or arbitration can only be made after the Engineer has made a written determination, or in the absence of a determination, 7 days after the Engineer's determination became due. If no demand to settle a Claim by litigation, mediation or arbitration is made within 15 days after the Engineer's

written decision was issued, the Engineer's decision shall become final and binding on the Owner and the Contractor and if a change in Contract Time or Price is involved, a Change Order shall be signed by both parties.

10.5 Provisions of law notwithstanding, the Owner and Contractor hereby agree that neither the Engineer, the Design Engineer, nor any other third party shall, without its specific written consent, be required to participate as a party in any litigation, arbitration or mediation proceedings between the Contractor and the Owner initiated to resolve disputes under the Contract Documents.

Mediation

10.6 If any dispute, controversy, or Claim (hereinafter referred to as a dispute) arises out of or relates to this Contract, or breach thereof, and if the dispute cannot be settled through direct discussions, then the parties first agree to try to settle the dispute by mediation before resorting to litigation or some other dispute resolution procedure. The mediator shall be an attorney experienced in mediating construction disputes and shall be chosen by agreement of the parties, but if no agreement then appointed by the Presiding Judge of the Superior Court in the jurisdiction of the site. Each party shall bear its own costs and expenses of the mediation, including attorney's fees. The fees and costs of the mediator shall be borne equally by the parties.

Work Continued During Disputes

10.7 The Contractor shall continue to work in conformance with the requirements of the Contract Documents and the progress schedule during any dispute and when waiting for decisions on Claims by the Engineer or for resolution of Claims by litigation, mediation or arbitration, unless otherwise directed in writing by the Engineer or Owner.

ARTICLE 11 - CONTRACT TIME AND DELAYS

Definitions

11.1 Definitions of Terms:

1 "Contract Time" is the period of time including authorized adjustments allowed for completion of the Work and is measured from the date of commencement in the Notice to Proceed to the date of Final Completion.

.2 "Day" is a calendar day beginning and ending at midnight.

.3 "Unusual Weather" is defined as when either the number of Wet Days or the number of Freezing Days exceeds the most recent published mean number of Wet or Freezing Days for the period of record, for the same month and for the weather observing station closest to the project site as reported in "Comparative Climatic Data" published by the National Oceanic and Atmospheric Administration, Ashville, NC 28801. "Wet Days" are defined as days that have at least 0.01 inch of rainfall unless modified in the Supplementary Conditions. "Freezing Days" are defined as days with a minimum temperature of 32 degrees F or lower.

Computation of Time

11.2 Any period of time referred to in the Contract Documents measured in days shall mean consecutive calendar days and shall exclude the first and include the last day. If the last day falls on a Saturday, Sunday or legal holiday, it shall be omitted from the calculation.

Contract Time

11.3 Time limits stated in the Agreement are the essence of the Contract. The Contractor confirms that the Contract Time is a reasonable period for performing the Work and includes enough float time to allow for normal unfavorable weather and other reasonably anticipated delays.

Damages for Late Completion

11.4 Liquidated damages if applicable are stipulated in the Agreement. If liquidated damages are not stipulated, the Contractor will be assessed actual damages suffered by the Owner as a result of completion after the Contract Time.

Commencing Work

11.5 The Contractor shall not commence work (1) prior to the date in the Notice to Proceed, (2) prior to giving the Engineer 5 days written notice and (3) prior to the effective date of insurance coverage required under Article 4.

Accelerated Work If Required to Meet Schedule

11.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. If the Contractor's performance falls behind schedule, the Contractor shall accelerate the work as required to get back on schedule at no additional cost to the Owner. Accelerated work shall include air or express delivery of materials and equipment, increasing the number of workers, working overtime, working

Saturdays, Sundays, and holidays and working additional shifts. The Contractor shall pay the Owner for any extra cost of inspection made necessary by accelerated work required under this provision.

Excusable Delay

11.7 "Excusable Delay" means unforeseeable delay beyond the Contractor's or Owner's control and not resulting from the Contractor's fault or negligence. Excusable Delay includes labor disputes, fire, Unusual Weather, unavoidable casualties and unusual delays in transportation. The Contractor may make a Claim under Article 10 for an extension of Contract Time due to an Excusable Delay if it can show that the Excusable Delay is the sole and unavoidable cause increasing the time actually needed to complete the Work. The Contractor shall not be entitled to an increase in Contract Price due to an Excusable Delay.

Compensable Delays

11.8 The Contractor may make a Claim under Article 10 for extension of Contract Time due to delays that are not due to the fault or neglect of the Contractor and which could not have been reasonably anticipated, including delays: (1) caused by the Owner or Engineer or by the Owner's separate contractors or workers, (2) resulting from the Owner's failure to provide access to lands or rights-of-way on which the Work is to be performed, or (3) due to suspension of the Work ordered by the Owner. In making such a Claim, the Contractor must demonstrate that the delay was the sole and unavoidable cause for increasing the length of time required to complete the Work. For purposes of settlement of Claims under this paragraph, the Contractor's cost shall be determined in accordance with paragraph 9.11 except that no mark-up for profit will be allowed and therefore, the maximum percentage mark-ups allowed under subparagraphs 9.11.6 and 9.11.7 shall be reduced by one-third.

11.9 Changes in Contract Time associated with changes ordered by the Owner are covered under Article 9.

11.10 An executed Change Order covering changes ordered by the Owner under Article 9 or the resolution of Claims made under Article 10 shall be the final and conclusive settlement of the change in Contract Time and Price for the work or Claim covered by the Change Order including all related costs in accordance with Article 9.4.

ARTICLE 12 - INSPECTION, DEFECTIVE WORK, GUARANTEE

Defective Work

12.1 Defective Work is work that (1) is unsatisfactory, faulty, deficient, or leaks, breaks, fails or does not conform to the Contract Documents; or (2) does not meet the requirements of reference standards, tests or approvals specifically referred to in the Contract Documents; or (3) has been damaged prior to final acceptance; or (4) does not meet applicable industry or trade standards; or (5) a submittal is required and Favorable Review has not been obtained.

Access to Work and Notice

12.2 The Contractor shall provide the Owner, the Engineer and each of their representatives safe access to every part of the Work at all times work is in progress for observation, inspecting and testing. The Contractor shall give 2 days notice of work being ready for required inspection, test or approval or of intent to cover work up.

Tests and Inspections

12.3 Unless otherwise specified, the Contractor shall arrange and pay for tests, inspections and approvals required by laws, ordinances, rules, regulations, orders of public authorities having jurisdiction or by the Contract Documents. All such tests, inspections and approvals shall be performed by an independent testing laboratory or inspection agency acceptable to the Engineer or to the appropriate public authority. Samples to be tested and items of work to be inspected will be selected by the Engineer or the public authority requiring the test or inspection. Test reports, inspection reports and certificates shall be submitted directly to the Engineer by the performing laboratory or agency. The Contractor shall notify the Engineer at least 2 days prior to all tests and inspections to permit observation by the Engineer.

Reinspection

12.4 If the Engineer determines that portions of the Work require additional testing or retesting, the Contractor shall provide material to be tested, safe access to test locations, power, light and other services. The cost of retesting shall be paid for by the Owner, but if the additional tests or retesting indicate that said portion of the Work is Defective, the Contractor shall pay the Owner all costs associated with additional testing or retesting including the cost of the Engineer's additional service.

Uncovering Work

12.5 If work is covered or concealed without giving the Engineer 2 days notice to permit observation, it shall be uncovered or exposed at the Contractor's expense to permit observation if so requested.

12.6 If the Engineer wishes to have work uncovered for observation after having been given the required notice to observe it, the Contractor shall uncover the work on a cost accounting basis. If the work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of uncovering and replacing the work. If the work is found to be Defective, the Contractor shall pay the cost of uncovering and correcting the work and the cost of required additional engineering and testing service.

Correction of Defective Work

12.7 The Contractor shall promptly correct or replace: (1) work rejected by the Engineer as being Defective, and (2) work that is Defective whether or not rejected by the Engineer. The Contractor shall correct Defective Work prior to installing subsequent related or connected Work. The Contractor's obligation to correct Defective Work applies to latent as well as patent defects and whether or not the work is fabricated, installed or completed and whether observed before or after Substantial Completion. The Contractor shall bear the cost of correcting Defective Work including consequential costs, engineering services and attorneys' fees made necessary thereby.

Acceptance or Use of Defective Work

12.8 The Owner may elect to accept Defective Work in which case a deductive Change Order shall be signed by the Contractor reflecting the decreased value of the Work. If final payment has been made, the Contractor shall pay to the Owner a sum reflecting the decreased value of the Work.

12.9 The Owner may use Defective Work without negating its rejection or decreasing the Guarantee Period which shall commence when the work is finally corrected or replaced and accepted. When all or part of the Work is being used by the Owner, the Contractor shall schedule correction or replacement of Defective Work at the Owner's convenience.

Tests and Inspections Do Not Reduce Contractor's Responsibility for Performance

12.10 Observations by the Engineer or tests, inspections or approvals by others shall not relieve the

Contractor from its obligation to perform the Work in accordance with the Contract Documents.

Guarantee Period

12.11 Within 7 days of receipt of written notice from the Owner, the Contractor shall correct or replace work found Defective within one year after the date of Final Completion of the Work and Acceptance by the Owner or such longer period as covered by any Special Guarantee required by the Contract Documents or by law. For work first performed or first made acceptable after the date of Final Completion, the one-year or longer Guarantee Period shall commence to run at the time the Work is completed or made acceptable.

Owner's Right to Correct Defective Work During Guarantee Period

12.12 If the Contractor fails to correct Defective Work within 7 days of receiving notice to do so, the Owner may correct the Work and recover the cost of correction from the Contractor. If the Defective Work creates an emergency where delay would cause unsafe conditions or serious risk of loss or damage, the Owner may proceed to correct the Defective Work without giving the Contractor notice.

12.13 If the Owner corrects Defective Work under this paragraph, the Contractor shall pay the Owner all direct, indirect and consequential cost and all required engineering services and attorney's fees.

12.14 The Contractor shall be responsible for the cost of removing and replacing work provided by the Owner when such removal and/or replacement is necessary to permit correction of Defective Work for which the Contractor is responsible.

Contractor's Liability for Defective Work Not Limited by Guarantee

12.15 Nothing contained in this Article 12 nor in any Special Guarantee required under Division 1 General Requirements shall be construed to limit the period of the Contractor's obligations under the Contract Documents or under law. Establishment of a time period for the Contractor's specific obligation to correct work places no limit on the time within which the Contractor's obligation to comply with the Contract Documents may be enforced nor on the period during which the Contractor may be held liable for the effect of Defective Work.

12.16 Nothing contained in this Article 12 nor in any Special Guarantee required under Division 1 General Requirements shall be construed to limit the Contractor's,

subcontractor's, material or equipment supplier's liability for damages sustained as a result of latent or patent defects in equipment or materials furnished or caused by the negligence of the Contractor or his subcontractors or suppliers. The guarantees contained in this Article 12 shall not be a waiver of nor shall they reduce any guarantee or warranty offered by the suppliers of materials or equipment furnished under this Contract nor shall they reduce any responsibilities imposed on manufacturers or suppliers of such equipment under law.

ARTICLE 13 - PAYMENT AND COMPLETION

Schedule of Values

13.1 At least 20 days prior to the first Application for Payment Date, the Contractor shall submit a Schedule of Values, in a form acceptable to the Engineer, allocating the Contract Price to various trades, types of work, pieces of equipment, and major tasks to assist the Engineer in evaluating the percentage completion for each part of the Work. The Contractor's overhead and profit shall be uniformly pro-rated over all items in the Schedule of Values. The Schedule of Values shall represent the actual cost of each segment of the work and shall not allocate higher costs, overhead or profit to work items scheduled for early completion. If the Engineer objects to the allocation of cost or the level of detail provided, the Contractor shall revise and resubmit the Schedule of Values.

Application for Payment

13.2 The period covered by each Application for Payment shall be one calendar month. Payment shall be based on work completed as of the Application for Payment Date which shall be the last day of the month unless otherwise stated in the Agreement. Within 7 days after each Application for Payment Date, the Contractor shall meet with the Engineer to review the line item amounts proposed by the Contractor for payment. When the amounts proposed are acceptable to the Engineer, the Contractor shall prepare and submit within 3 days, the Application for Payment form, attached as Exhibit GC-4, and Conditional Lien Releases from the Contractor, each subcontractor, supplier and materialman whose work is included in the Application. The Contractor shall sign and certify on the Application for Payment, subject to penalty of perjury, the following: "The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents and that all Work for which previous payments have been received

is free and clear of liens, claims, security interests or encumbrances of any kind. The Contractor further warrants that title to all Work covered by this Application for Payment will pass to the Owner no later than the time of payment."

Payment for Items Delivered But Not Installed

13.3 If recommended by the Engineer, Applications for Payment may include the percentage of value stipulated in the Agreement for major equipment and custom fabricated items that have been delivered, stored and protected at the site providing proof is furnished that title will pass to the Owner upon payment. Payment will not be made for material stored at the site that is not custom fabricated. Payment will not be made for items stored off the site. Payment will not be made for stored or installed items that are not protected from physical, environmental or other damage. Payment for successful submittal of Shop Drawings or Product Data will be made only when specifically provided for in Division 1.

Engineer's Recommendation for Payment

13.4 Within 7 days after receipt of the Contractor's Application for Payment, the Engineer will either issue a Recommendation for Payment for such amount as the Engineer determines is due or will notify the Contractor and the Owner of reasons for withholding recommendation. The Engineer's recommendation will not be an evaluation or interpretation based upon legal theories or principles but will be based upon sound engineering judgment. The Owner will seek independent legal services, if necessary to assist it in determining if withholds are appropriate. Retainage to be withheld by the Owner is stipulated in the Agreement.

13.5 The Engineer's Recommendation for Payment will constitute a representation that to the Engineer's best knowledge, information and belief the Work has progressed to the point indicated and is generally in conformance with the Contract Documents but is subject to re-evaluation during subsequent site visits and upon final completion. The Engineer's Recommendation for Payment shall not be taken as a representation that the Engineer has (1) made exhaustive or continuous onsite inspections to check the quality of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Price, or (5) offered its legal opinion in any respect.

13.6 If, in the Engineer's opinion, the representations in paragraph 13.5 cannot be made or if the Engineer has knowledge of any of the faults listed below, then the Engineer may decline to issue a Recommendation for Payment or may recommend a reduced amount of payment or may rescind previously issued Recommendation for Payment. Faults for which payment may be withheld, reduced or rescinded include:

- .1 Defective Work not corrected;
- .2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 Failure of the Contractor to make payments properly to subcontractors or suppliers for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- .5 Damage to property, the Work, the Owner, another contractor or a third party;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 Work performed for which submittals are required prior to obtaining Favorable Review of submittals;
- .8 Persistent failure to carry out the Work in accordance with the Contract Documents;
- .9 Failure to submit a construction schedule or to update the construction schedule in accordance with General Conditions paragraph 5.18;
- .10 Failure to update Record Drawings weekly;
- .11 Failure to reinstate required insurance that has been allowed to lapse; or
- .12 Non-payment of money owed to the Owner for the extra cost of inspection or engineering services provided for in the General Conditions.

Completion and Acceptance

13.7 Definitions

.1 "Substantial Completion" means the Work has progressed to the point that: (1) the Work is ready for beneficial use and occupancy by the Owner for the intended purpose, (2) all fire and life safety work has been completed, inspected and accepted, (3) all mechanical and process systems and equipment are complete and have been put in automatic operation, (4) the total value of uncompleted work is less than one-half of one percent of the Contract Price and (5) completing the Work will not significantly interfere with the Owner's convenience, use or cost of operation.

.2 "Semi-Final Inspection" determines if the Work is Substantially Complete.

.3 "Final Inspection" determines if the Work has reached Final Completion.

.4 "Final Completion" indicates that the Work has been fully completed in accordance with the Contract Documents and is ready for acceptance and final payment by the Owner.

.5 "The Final Punch List" contains items that remain uncompleted after Substantial Completion but that must be completed prior to Final Completion.

Owner's Right to Partial Use

13.8 When provided for in the Contract Documents or agreed to in writing by the Owner and the Contractor, the Owner may notify the Contractor and begin using a portion of the Work even though it is not Substantially Complete. The Contractor, the Owner and the Engineer shall agree on and document responsibilities for security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that portion of the Work being used by the Owner. The Owner, the Contractor and the Engineer shall inspect such portion of the Work and shall prepare a list of work to be completed or corrected before final acceptance. The Owner's use of any portion of the Work shall not constitute final acceptance of that portion of the Work prior to Final Completion and acceptance of the Work as a whole. The Owner shall allow the Contractor reasonable access to complete or correct work in areas being used by the Owner. Partial beneficial occupancy shall not relieve the Contractor of Liquidated Damages unless the Contract Documents expressly provide for and identify the portion of Work that may be considered Substantially Complete before the remaining portions of the Work.

Contractor's List of Deficiencies

13.9 When the Contractor considers the Work nearly complete, the Contractor shall review the Contract Documents, inspect the Work and prepare a list of deficiencies (Punch List). The Contractor shall complete or correct the items on the Punch List until, in the Contractor's opinion, the Work is Substantially Complete and ready for occupancy and use by the Owner. The Contractor shall then deliver the Punch List to the Engineer and notify the Engineer in writing that the Contractor believes the Work is Substantially Complete and ready for a Semi-Final Inspection.

Semi-Final Inspection, Substantial Completion

13.10 When the Work is ready and the Contractor so notifies the Engineer in writing, the Engineer will make a

Semi-Final Inspection and may add additional items to the Contractor's Punch List. As a result of this inspection, the Engineer may determine that (1) the Work is not sufficiently complete to warrant a Semi-Final Inspection, additions to the Contractor's Punch List, or the preparation of a Final Punch List, (2) the Work is sufficiently complete for the Engineer to prepare a Final Punch List but certain incomplete or Defective Work prohibits use of the Work for its intended purpose and therefore, the Work is not Substantially Complete, or (3) that the Work is Substantially Complete and usable for its intended purpose and the Engineer can prepare a Final Punch list. In preceding cases 1 and 2, the Contractor shall continue the Work and call for a second Semi-Final Inspection when the Work is ready. In case (3), the Engineer will prepare a Final Punch List and a notice of Substantial Completion which shall establish the date of Substantial Completion and shall state the time agreed to by the Owner and the Contractor (not to exceed 30 days) in which the Contractor shall complete all work ready for Final Inspection. The date of Substantial Completion shall be revised if necessary such that it is no more than 30 days prior to the actual date of Final Completion. The Engineer shall attach a copy of the Final Punch List to the notice of Substantial Completion. If the Contractor does not achieve Substantial Completion on the second attempt, it shall reimburse the Owner the cost of the Engineer's services for additional inspections.

Final Inspection, Final Completion

13.11 When the Contractor has completed or corrected all the items on the Engineer's Final Punch List and has made all required final submittals, the Contractor shall give the Engineer written notice that the Work is ready for Final Inspection and acceptance and upon receipt of a final Application for Payment, the Engineer shall make a Final Inspection. If the Engineer finds the Work is not fully complete, it shall notify the Contractor of items still requiring completion or correction. The Contractor shall immediately correct these deficiencies and call for a reinspection. When the Engineer finds to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's observations and inspections, the Work is acceptable and fully complete in accordance with the Contract Documents, and when all final submittals have been made, the Engineer will recommend that the Owner issue and file a Notice of Completion, designating Final Completion, make Final Payment and Accept the Work in accordance with the terms and conditions of the Contract Documents.

13.12 Neither the Engineer's failure to include an item on the Final Punch List, nor making of the Semi-Final or the Final Inspection, nor recommendation of final acceptance shall alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

Final Payment

13.13 Within 10 days after the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to defend and indemnify the Owner against such liens, the Owner shall accept the Work and file a Notice of Completion. Final Payment shall not become due until 60 days after the Owner files a Notice of Completion and there being no liens or stop notices filed. If any lien or stop notice remains unsatisfied, the Contractor shall immediately take all steps necessary to remove all liens or stop notices before Final Payment is made. If any liens are filed or exist after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.

Waiver of Claims

13.14 The making of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 Liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 Failure of the Work to comply with the requirements of the Contract Documents; or
- .3 Terms of the one-year guarantee period and special warranties required by the Contract Documents.
- .4 Any of the Contractor's continuing obligations under the Contract Documents.

13.15 Acceptance of Final Payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 14 - TERMINATION

Termination by the Owner for Cause

14.1 The Owner may terminate the Contract if the Contractor:

- .1 Persistently fails to provide enough workers or materials to properly pursue the Work as required to complete the Work within the Contract Time;

.2 Persistently fails to perform the Work in accordance with the Contract Documents including, but not limited to providing monthly updates to the schedule of Work and monthly updates to Record Drawings, or to correct or replace Defective Work when directed to do so;

.3 Fails to make payment to subcontractors or material suppliers;

.4 Becomes insolvent, commences any form of voluntary bankruptcy proceedings, has any petition or action filed against it under any bankruptcy code or law, makes a general assignment for the benefit of creditors, or if a trustee, receiver or agent is appointed under law to take charge of Contractor's property or operations for the benefit of creditors;

.5 Persistently disregards laws, regulations, rules or orders of public bodies having jurisdiction or persistently disregards the authority of the Engineer or Owner;

.6 Fails to retain a valid Contractor's license of the required class in the applicable jurisdiction; or

.7 Otherwise commits a material breach of the Contract.

14.2 When any of the above reasons exist and without prejudice to any other rights or remedies the Owner may have, and after giving the Contractor and the Contractor's Surety 7 days written notice, the Owner may terminate the employment of the Contractor and, subject to any prior rights of the Surety, the Owner may:

- .1 Take possession of the site and of all material, tools and construction equipment on the site owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to paragraph 5.9; and
- .3 Complete the Work by any reasonable method the Owner may select.

14.3 When the Owner terminates the Contract for cause, the Contractor shall not be entitled to further payment until the Work has been completed.

14.4 If the cost of completing the Work, including additional engineering services, attorney's fees and administrative expenses made necessary thereby, exceeds the unpaid Contract Price, the Contractor shall pay the difference to the Owner. This obligation for payment shall be binding after termination of the Contract. If the cost of completing the Work including costs for engineering, legal, and administrative services minus the Contractor's unearned overhead and profit computed in accordance with paragraphs 9.11.6 and

9.11.7, is less than the unpaid Contract Price, the difference and other consequential costs shall be paid to the Contractor.

Suspension by the Owner for Convenience

14.5 The Owner, without cause, may issue written order giving the Contractor 7 days notice to suspend, delay or interrupt the Work in whole or in part for any period of not more than 90 consecutive days. The order shall fix the dates on which the work shall cease and resume.

14.6 If a suspension, delay, or interruption of the Work ordered by the Owner for convenience causes an increase or decrease in the cost of performing the Contract, the Contract Price shall be adjusted as agreed by the Owner and the Contractor or in accordance with the method for determining the cost of changes in Article 9. The Contract Price shall not be adjusted if the Contractor's performance would otherwise have been suspended, delayed or interrupted due to causes for which the Contractor is responsible.

Termination by the Owner for Convenience

14.7 The Owner may terminate the Contract without cause by giving the Contractor 7 days written notice. Such termination shall not prejudice any other right or remedy the Owner may have under the Contract. If the Contract is terminated without cause, the Contractor shall be paid for all work executed as of the date of termination plus reasonable termination expenses including direct, indirect and consequential costs but the Contractor shall not be paid for anticipated profit on work not performed.

Contractor May Stop Work or Terminate

14.8 If, through no act or fault of Contractor, the Work is suspended for a period of more than 90 days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within 30 days after it is submitted, or the Owner fails for 60 days to pay the Contractor any sum finally determined to be due, the Contractor may, upon 7 days' written notice to the Owner and the Engineer, terminate the Agreement and recover from the Owner payment for all Work performed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if the Engineer has failed to act on an Application for Payment or the Owner has failed to make any payment as aforesaid, the Contractor may, upon 7 days' written notice to the Owner and the Engineer, stop the Work until payment of all amounts then due is received. The provisions of this paragraph shall not relieve the

Contractor of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the Owner.

ARTICLE 15 - MISCELLANEOUS

Method for Giving Notices

15.1 Written notice shall be considered to have been given if delivered in person to the individual, partner of the partnership or joint venture, or officer of the corporation for whom intended or if sent by registered or certified mail to the address given in the Agreement unless amended by written notice. Notice to the Contractor's superintendent shall be considered notice to the Contractor. Notice to the Resident Engineer shall be considered notice to the Engineer. Notice to the Owner's Project Representative or Manager shall be considered notice to the Owner.

Rights and Remedies

15.2 Duties, obligations, rights and remedies prescribed by the Contract Documents shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed by or available under law.

Failure to Act Not a Waiver of Rights

15.3 Except as expressly provided in the Contract Documents, no action or failure to act by the Owner, Engineer, Design Engineer or Contractor shall constitute a waiver of a right afforded or duty imposed under the Contract. No such action or failure to act shall constitute approval of or acquiescence in failure to perform in accordance with the Contract Documents or any other breach of contract.

Severability of Provisions

15.4 The finding under law that any one or more provisions or any portion of a provision in the Contract Documents is invalid, unenforceable, or illegal shall not impair the validity or enforceability of any other provision or of the Contract Documents as a whole. In the case of invalidity or enforceability of any provision or portion thereof, the provision shall be rewritten and enforced to the maximum extent permitted by law to accomplish as near as possible the intent of the original provision.

Right to Audit

15.5 The Owner shall have the right to audit the Contractor's accounting records and the accounting records of any tier of subcontractor to verify the cost of work done on a cost accounting basis as provided under Article 9.

Governing Law

15.6 The Contract shall be governed by the law of the place where the project is located.

END OF GENERAL CONDITIONS

From: Company Name
Mailing Address
City, ST Zip
Name

Page: 1 of 2
Date: _____
K/J Job No.: _____
Project Name: _____

Request for Information

Originator: _____ **Drawing Reference:** _____
Requested Date of Response: _____ **Specification Section:** _____

Written requests for information will not be considered without an accompanying completed copy of this RFI. By submission of this form the Contractor represents it has carefully reviewed the Contract Documents, coordinated the Work with the appropriate subcontractors, reviewed the field conditions and hereby certifies that the information requested cannot be determined from such efforts as required by the Contract Documents.

The Contractor requests the following information in accordance with the requirements of the Contract Documents.

Description of Requested Information

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

Contractor's Proposed Method of Resolving Issue

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

Contractor's Proposed Impact on Project

Estimated Contract Cost will be increased decreased unchanged by: _____

Estimated Contract Time will be increased decreased unchanged by: _____ days.

Attachments

Empty box for attachments.

Attach supporting documentation sufficient for Engineer to evaluate Request for Information, including documentation of field conditions. Forms submitted without adequate documentation will be returned without comment for further clarification.

Contractor's signature below signifies acceptance of responsibility for accuracy and completeness of information included in this Request for Information Form.

Authorized Signature: _____

Title: _____

Company: _____

Date: _____

Response Date: _____ **K/J Job No.:** _____
Specification Section: _____ **Project Name:** _____
Drawing Reference: _____ **Page:** 2 of 2

Response

Notations listed below indicate the response to the Contractor’s proposed method to resolve the issue. If the Contractor has not proposed a method of resolution, see remarks below. Modification of costs, project schedule or time shall be processed in accordance with the Contract Documents.

- No Exceptions Taken (NET)
- Make Corrections Noted (MCN)
- Amend and Resubmit (A&R)
- Rejected, Resubmit (RR)
- Returned Without Review (NR)

Remarks

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

If Contractor estimates an impact on Project time or price based upon Response, submit Reply within 5 working days of receipt.

Respondent: _____ **Signature:** _____
Company: _____ **Date:** _____
Issued for Kennedy/Jenks Consultants by: _____

Contractor’s Reply To Response:

Estimated Contract Cost will be increased decreased unchanged by: _____
 Estimated Contract Time will be increased decreased unchanged by: _____ Days.

Comments

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

Distribution	RFI	Response	Reply
Owner	_____	_____	_____
Engineer	_____	_____	_____
Contractor	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
File	_____	_____	_____

From: Company Name
Mailing Address
City, ST Zip
Name

Page: 1 of 2
Submittal Date: _____
K/J Job No.: _____
Project Name: _____

Specification Section: _____ **Prior Submittal:** _____

Submittal

A. Certification of Completeness and Accuracy

We certify that we have reviewed this submittal in detail and that the submittal is:

1. Complete and accurate and in complete compliance with the Contract Documents.
2. Compliant with the requirements of "Material and Equipment" in Section 01040, especially the subparagraph titled "Compatibility of Equipment and Material".
3. Compliant with the paragraph titled "Performance Specifications and Contractor Designed Items" in Section 01040.
4. Without any deviations from the Contract Drawings, except the following (describe deviation) which have the following advantages and disadvantages:

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

Signed by Subcontractor: _____ Title: _____ Date: _____

Signed by Contractor: _____ Title: _____ Date: _____

B. Certification of Year 2000 Compliance

We certify that all material, equipment, hardware, software and firmware product submitted is "Year 2000 Compliant". Year 2000 Compliant products perform without error, loss of data or loss of functionality arising from any failure to process, calculate, compare or sequence date data accurately. In addition, Year 2000 Compliant products and/or services will not cause any associated products or systems in which they may be used to fail in any ways described above. We include the manufacturer's Year 2000 Compliance Certification with this submittal.

Signed by Subcontractor: _____ Title: _____ Date: _____

Signed by Contractor: _____ Title: _____ Date: _____

Response Date: _____
Specification Section: _____

K/J Job No.: _____
Project Name: _____

Page: 2 of 2

Response

Item	K/J Action	Refer to Comment	Manufacturer or Supplier	Title of Submittal / Drawing

A. The action(s) noted above have been taken on the enclosed document(s).

NET = No Exceptions Taken A&R = Amend and Resubmit NR = Not Reviewed
 MCN = Make Corrections Noted RR = Rejected, Resubmit

Comment(s):

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

B. Corrections or comments made on the shop drawings during this review do not relieve the Contractor from compliance with the requirements of the Drawings and Specifications. This check is only for review of general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. The Contractor is responsible for: confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating its work with that of all other trades, and performing its work in a safe and satisfactory manner.

 Responder: type name here - sign above

Distribution	Submittal	Encl.	Response
Owner	_____	_____	_____
Engineer	_____	_____	_____
Contractor	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
File	_____	_____	_____

From: Company Name
Mailing Address
City, ST Zip
Name

Page: 1 of 3
Submission Date: _____
K/J Job No.: _____
Project Name: _____

Specification Section: _____

Prior Submittal: _____

Proposed Equivalent

- A. When the first specified item is followed by a second maker's name and "or equal," the Contractor may submit Proposed Equivalent items for the Engineer's review. Proposed Equivalent items that are in the Engineer's judgment equal to the first specified item in quality, utility, and appearance, will be Favorably Reviewed. Where a product description and first maker's name is followed by "or equal" with no second maker's name, it means the specifier knows of no equivalent product and the Contractor may submit Proposed Equivalent products by other makers for review. Where the term "or equal" is omitted, it means that the named item is required to meet the Owner's needs; no products or makers other than those specified will be considered.
- B. This request shall include adequate technical information to fully describe the function and quality of the item. Submittals of Proposed Equivalent items that are not made within 35 days of the Notice to Proceed will be rejected unless the Engineer has agreed in writing to a later submittal date and the Contractor agrees to comply with all conditions of the Engineer for the late submittal. If the Contractor's second attempt to obtain Favorable Review of a Proposed Equivalent item is unsuccessful, the Contractor shall submit the first specified item.
- C. Inclusion of a second maker's name indicates the maker is acceptable but does not necessarily indicate the maker offers a standard product equal to the first specified item. Items by the second named maker are subject to the same conditions of review and compatibility as other Proposed Equivalent items. Inclusion of a maker's name and/or model number after a specification description is not a representation that the maker will furnish an item meeting the Contract requirements at bid time or at time of need. It is the Contractor's sole responsibility to furnish items meeting the Contract requirements.
- D. The Engineer's review of Proposed Equivalent items is based solely on information provided by the Contractor and on the Contractor's warranty that the proposed item is equal in quality, utility, function and appearance to the first specified item. Favorable Review of a Proposed Equivalent item has the same meaning and is subject to the same limitations that apply to the Favorable Review of Product Data and Shop Drawings described in the Contract Documents.
- E. Submit with proposal:
 - 1. Description of item being proposed including the Manufacturer's model number.
 - 2. Manufacturer's representation that item is equal to or superior to specified item in all respects.
 - 3. Manufacturer's product data.
 - 4. Information about several recent similar installations, including project name, owner's name, address, telephone number, and name of knowledgeable person to contact for information on performance of the product.
 - 5. Whether a reduction in the Contract Price is being proposed and, if so, how much.
 - 6. Any differences between the product specified and the Proposed Equivalent, including the warranty.

Submission Date:
Project Name:
Specification Section:
Page 2 of 3

F. Certification of Equivalency, Completeness and Accuracy:

We certify that we have reviewed this request in detail and that the item proposed is:

1. Equal to or superior to the specified item
2. Complete and accurate and in complete compliance with the Contract Documents,
3. Compliant with the requirements of "Material and Equipment" in Section 01040, especially the subparagraph titled "Compatibility of Equipment and Material",
4. Compliant with the paragraph titled "Performance Specifications and Contractor Designed Work" in Section 01040,
5. Without any deviations from the Contract Documents, except the following (describe deviation) which have the following advantages and disadvantages:

Delete or replace this text with your response. Space is limited; attach additional sheets if necessary.

We further represent and warrant to be solely responsible for any extra cost or expense necessary to make the proposed item or service fully equivalent to and compatible with the Contract Documents and meet or exceed the design intent.

If we use the Proposed Equivalent, we agree to comply with all additional requirements imposed upon us by the Engineer and Owner.

Signed by Subcontractor: _____ Title: _____ Date: _____

Signed by Contractor: _____ Title: _____ Date: _____

G. Certification of Year 2000 Compliance:

We certify that all material, equipment, hardware, software and firmware product submitted is "Year 2000 Compliant". Year 2000 Compliant products perform without error, loss of data or loss of functionality arising from any failure to process, calculate, compare or sequence date data accurately. In addition, Year 2000 Compliant products and/or services will not cause any associated products or systems in which they may be used to fail in any ways described above. We include the manufacturer's Year 2000 Compliance Certification with this submittal.

Signed by Subcontractor: _____ Title: _____ Date: _____

Signed by Contractor: _____ Title: _____ Date: _____

To: Name
MailingAddress
CityStateZip

Date: Date
K/J Job No.: 000000.00
Project: ProjectName
Contract Date: Date
Period To: Date

Distribution to:
 Owner

Attn: Name

Engineer

From: ContractorName
Mailing Address
CityStateZip

Reviewed By: Kennedy/Jenks Consultants, Inc.
MailingAddress
CityStateZip

Contractor
 Architect

Prepared By: Name

Recommended By: Name

Contractor's Application for Payment																	
1. Original Contract Sum																	
2. Net Change by Change Orders																	
3. Contract Sum To Date (Line 1 ± 2)																	
4. Total Completed & Stored to Date (Column G on Page 2)																	
5. Retainage:																	
a. _____ % of Completed Work (Column D + E)																	
b. _____ % of Stored Material (Column F)																	
Total Retainage (Lines 5a + 5b or Total in Column I)																	
6. Total Earned Less Retainage (Line 4 less Line 5 Total)																	
7. Less Previous Payments (Line 6 from prior Applications)																	
8. Current Payment Due (Line 6 less Line 7)																	
9. Balance to Finish, Including Retainage (Line 3 less Line 6)																	
<p>The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents and that all Work for which previous payments have been received is free and clear of liens, claims, security interests or encumbrances of any kind. The Contractor further warrants that title to all Work covered by this Application for Payment will pass to the Owner no later than the time of payment.</p> <p style="text-align: right;">By: _____ Date: _____ Contractor</p>																	
<p style="text-align: center;">State of: _____ County of: _____ Subscribed and sworn to before me this _____ day of _____</p> <p>Notary Public: _____</p> <p>My Commission expires: _____</p>																	
<p>Engineer's Recommendation for Payment: In accordance with the Contract Documents, the Engineer recommends to the Owner that the Contractor is entitled to payment in the amount recommended, subject to withholds, deductions or credits pursuant to the Contract Documents.</p> <p style="text-align: center;">Amount Recommended..... _____</p> <p style="text-align: right;">By: _____ Date: _____ Kennedy/Jenks Consultants, Inc.</p>																	
<p>This Certificate is not negotiable. The amount recommended is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.</p>																	
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Change Order Summary</th> <th style="width: 10%;">Additions</th> <th style="width: 10%;">Deductions</th> </tr> </thead> <tbody> <tr> <td>Total Changes approved by Owner in previous months</td> <td></td> <td></td> </tr> <tr> <td>Total approved this month</td> <td></td> <td></td> </tr> <tr> <td>Totals</td> <td></td> <td></td> </tr> <tr> <td>Net Changes by Change Order</td> <td></td> <td></td> </tr> </tbody> </table>			Change Order Summary	Additions	Deductions	Total Changes approved by Owner in previous months			Total approved this month			Totals			Net Changes by Change Order		
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