

**Advertisement, Proposal, Contract Documents, and
Technical Specifications for
HL-0029 NC 55 Right Turn Lane (TOHS #19-005)
and
HL-0030 Main Street Right Turn Lane (TOHS #19-001)
Wake County, North Carolina**

Prepared for:

**Town of Holly Springs
North Carolina**

August 2024



**MAYOR:
TOWN CLERK:
TOWN MANAGER:
EXECUTIVE DIRECTOR:
PROJECT ENGINEER:**

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INVITATION FOR BIDS

TOWN OF HOLLY SPRINGS
Holly Springs, North Carolina

August 8, 2024

Sealed bids should be submitted by September 26, 2024, at 2:00 p.m. to the attention of Brettany DeVold, (Finance Department – Town Hall) Town of Holly Springs, 128 South Main Street, Holly Springs, North Carolina, 27540 and marked "**HL-0029 NC 55 Right Turn Lane (TOHS 19-005)/ HL-0030 Main Street Right Turn Lane (TOHS #19-001)**".

The projects are generally described as follows:

HL-0029 consists of widening NC Hwy 55 from Aven Ferry Road (SR 1115) to South Main Street SR 1114).

HL-0030 consists of approximately 420 LF of roadway widening along Main Street. Projects will include grading, drainage, paving, curb and gutter, traffic control, pavement markings and markers, utilities, erosion control, signing, signals, and other related items as shown on the plans in accordance with these specifications and plans. All work shall be performed in accordance with the North Carolina Department of Transportation Standard Specifications for Roads and Structures dated January 2024 with all amendments and supplements.

Plans, Specifications, and Contract documents may be seen on the Town's website at <https://www.hollyspringsnc.gov/2456/Bids-Requests-for-Proposals> (available for download), and at the following electronic plan rooms: Carolina Plan Room, Carolina AGC, iSqFt, Planscope.com (Accent Imaging), PlanHub, Bidclerk, Construct Connect, NC Institute of Minority Economic Development (NCIMED), Dodge Data & Analytics, HCACarolinas and the Department of Administration's Electronic Vendor Portal (eVP).

REQUIRED: Plan holders are required to sign up for "Construction Bids" notifications at <https://www.hollyspringsnc.gov/2456/Bids-Requests-for-Proposals> for further project notifications/addenda.

A pre-bid meeting for explanation of the project requirements will be conducted at **10:00 a.m. to 11:30 a.m.** on **August 30, 2024** in the Holleman Room at 128 S. Main St., Holly Springs, NC, 27540.

The project will be funded by public funds from the Town of Holly Springs and NCDOT, therefore; bidding, contract award and bonding requirements shall conform to N.C Statutes for public facilities construction. Minority firms are encouraged to submit proposals.

Award will be made to the lowest, responsive, responsible bidder unless all bids are rejected. The Town of Holly Springs reserves the right to reject any or all bids.

Contractors offering a proposal on this project must be licensed to do the specified type of contracting in the State of North Carolina. The Use of any sub-contractor on this project must be approved by the Engineer. Any bidder that is currently in litigation with the town will be disqualified from bidding.

Bidder Prequalification - Bidders are required to be prequalified with NCDOT for their specific discipline. Please refer to Section 102-2 of the NCDOT 2024 Standard Specifications. Contractors wishing to become prequalified may obtain information through the NCDOT website at <http://www.ncdot.gov/business/>.

The TOWN OF HOLLY SPRINGS reserves the right to waive any informality, to reject any and all BIDS, and to award a contract which, in its judgment, is in the best interest of the Town of Holly Springs.

The BIDDER to whom a contract may be awarded shall fully comply with the requirements of all North Carolina General Statutes governing the practice of general contracting and the procedures for letting of public contracts.

All bids shall include the entire contract document bound as it was presented for bid, with applicable bidding information filled out. Do not remove sections and resubmit. Each proposal shall be accompanied by a certified check or bid bond in the amount of not less than five percent (5%) of the amount of the total of the itemized bid in the form and subject to the conditions provided in the Instruction to Bidders.

Kendra D. Parrish, PE
Executive Director
Utilities & Infrastructure

INSTRUCTIONS TO BIDDERS

Each proposal shall be submitted in a sealed envelope on the printed form, or exact copies thereof, contained in the Contract Documents. These proposals shall be plainly marked:

"HL-0029 NC 55 Right Turn Lane (TOHS 19-005)/HL-0030 Main Street Right Turn Lane (TOHS #19-001)"

The envelope shall also be marked with the Bidder's name, address, North Carolina **contractor license number (if applicable)**, and name and phone number of a contact person. **All bids shall include the entire contract document bound as it was presented for bid, with applicable bidding information filled out. Do not remove section and resubmit.**

If mailed or delivered, the envelope shall show the date and time of the Bid Opening in order to guard against premature opening of the Bid. Addresses for Delivery of Bids:

US Postal Service	Delivery
Attn: Brettany DeVold Town of Holly Springs Finance Department P O Box 8 Holly Springs, NC 27540	Attn: Brettany DeVold Town of Holly Springs Finance Department 128 South Main Street Holly Springs, NC 27540

Bids submitted by facsimile shall not be accepted.

The Owner may consider non-responsive any Bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all Bids.

Both projects will be contracted as separate projects with the Town of Holly Springs.

The Bidder should place the base bid amount for each project on the itemized proposal sheet for each project. In addition the amount should be translated to the Bid Summary Sheet on page x, and a combined total for both projects included on the Total Base Bid line.

Each proposal shall be accompanied by a Bid Bond payable to the Town of Holly Springs for an amount of not less than five percent (5%) of the total amount bid; or in lieu of the Bid Bond, the bidder may offer a certified check in an amount of not less than five percent (5%) of the total amount bid. The Bids and bidder's bond or checks of all bidders may be held for a period of ninety (90) days pending award of the contract. Notification of award of contract shall be evidence of intent to contract and shall extend time for holding the contractor's bid surety for a time mutually agreed between the Town of Holly Springs and the bidder.

Each proposal is required to have a page providing references to include the company name, address, phone number, e-mail and contact name and position and the type of work completed.

This is a Formal Bid Solicitation for a project that constitutes two separate road projects in Holly Springs- 1) S Right Turn lane at NC 55 at South Main Street ("HL-0029 NC 55 Right Turn Lane") ; and 2) a right turn lane at Main Street & Holly Springs Road (called "HL-0030 Main Street Right Turn Lane"). The successful bidder will need to contractually obligate itself to successfully complete both projects according to this project manual and related documents.

AWARDING CONTRACT

The Town of Holly Springs, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the Regulations of the Department of Transportation (*49 C.F.R., Part 21*), issued pursuant to such act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, or national origin.

Award will be made to the lowest responsible and responsive Bidder for the combined Base Bid for both projects as soon as practicable, provided that in the selection of equipment or materials, a Contract may be awarded to a responsible Bidder other than the lowest in the interest of standardization or if ultimate economy is clearly evident.

Evaluation of Bids

1. All spaces for lump sum and unit prices in the Bid Form shall be filled in with a number. Spaces left blank will be evaluated as zero (\$0.00).
2. Discrepancies between the multiplication of units of Work and Unit Prices will be resolved in favor of the Unit Prices.
3. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
4. Discrepancies between words and figures will be resolved in favor of the words.
5. Base bids for each project should be listed on the itemized proposal sheet for each project and translated to the Bid Summary Sheet on page x, and a combined total base bid listed.

The award of the Contract, if it is awarded, will be to the lowest responsive, responsible bidder for both projects combined. The Town of Holly Springs reserves the right to waive technicalities and/or reject any or all bids.

The Owner will not consider any bid or award of Contract to any person, firm, or corporation who has defaulted in any obligation to the Owner or who, in the opinion of the Owner, failed to perform their work satisfactorily, either as to character or time.

Any bidder that is currently in litigation with the town will be disqualified from bidding

A conditioned or qualified bid will not be accepted.

~~Requirements for the submittal information will vary based on the complexity and importance of the product to the project as a whole. Submittals should be prepared in a concise and straightforward manner. Submittals shall clearly identify variances from the specifications. Products that clearly do not meet the requirements of the specifications and plans should not be submitted. Unless noted, products shall be the manufacturer's standard offering, with standard options.~~

~~Incomplete submittals, or submittals received after the deadline, shall not be considered.~~

~~Submittals are to be delivered to the Engineer at the address indicated in the "Notice To Bidders". The Owner and Engineer shall review all submittals and issue an Addendum to all document holders no later than 7 days prior to the bid opening date, listing the approved products.~~

Pre-approval of materials or equipment does not, in any manner, preclude the manufacturer from meeting the full requirements of the specifications, including any performance guarantees required, unless specific exceptions are noted in the pre-approval.

No Post-Bid substitutions shall be permitted except as herein provided.

A Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the contract price for each project, with a corporate surety approved by the Town of Holly Springs, will be required for the faithful performance of the contract. Bidders shall provide certification that performance and payment bond sureties are licensed in North Carolina.

Minority Business participation must be documented and submitted with bids.

Both projects will be contracted as separate projects with the Town of Holly Springs.

**Reference Sheet
(To be filled out with each submittal package)**

Company Name	Address	Phone	E-mail	Contact person Name	Contact Person Position	Type of Work Completed

ADDITIONAL INSTRUCTIONS

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.

1. The bid form furnished by **Town of Holly Springs** with the proposal shall be used and shall not be altered in any manner.
2. All entries on the bid form, including signatures, shall be written in ink.
3. The Bidder shall submit a unit price for every item on the bid form. The unit prices for the various contract items shall be written in figures. *****Unit prices must be limited to TWO decimal places.*****
4. An amount bid shall be entered on the bid form for every item. The amount bid for each item shall be determined by multiplying each unit bid by the quantity for that item, and shall be written in figures in the "Amount Bid" column of the form.
5. The total amount bid shall be written in figures in the proper place on the bid form. The total amount shall be determined by adding the amounts bid for each item.
6. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do not use "White Out" or similar product to make corrections.
7. The bid shall be properly executed. All bids shall show the following information:
 - a. Name of individual, firm, corporation, partnership, or joint venture submitting bid.
 - b. Name of individual or representative submitting bid and position or title.
 - c. Name, signature, and position or title of witness.
 - d. Federal Identification Number
 - e. Contractor's License Number (If available)

- 8.** Bids submitted by corporations shall bear the seal of the corporation.
- 9.** The bid shall not contain any unauthorized additions, deletions, or conditional bids.
- 10.** The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

BID SUMMARY SHEET

HL-0029 NC 55 RIGHT TURN LANE BASE BID \$ _____

HL-0030 MAIN STREET TURN LANE BASE BID \$ _____

TOTAL COMBINED of ABOVE TWO BASE BIDS* _____

***This number will comprise of the bidder's final bid price**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL AND SPECIAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



AMERICAN COUNCIL OF
ENGINEERING COMPANIES



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Professional Engineers®**

ASCE American Society
of Civil Engineers

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This document has been approved and endorsed by



The Associated General Contractors of America

Construction Specifications Institute

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, the Invitation to Bid, the Instructions to Bidders, this Project Manual, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement. In the discretion of the OWNER, the OWNER may replace the ENGINEER from time to time pursuant to the terms of any agreement(s) between the OWNER and the ENGINEER. Once the CONTRACTOR has been notified in writing by the OWNER of the identity of a new or replacement ENGINEER for the Project or a portion thereof, the CONTRACTOR shall treat such new or replacement ENGINEER as the ENGINEER under the Contract Documents for the remainder of the Project, or the portion of the Project so specified by the OWNER, but nothing herein shall impute any liability on a new or replacement ENGINEER's part for actions or circumstances of a prior ENGINEER. The ENGINEER is the Director of Engineering of the Town of Holly Springs and/or any other party identified by the OWNER as the ENGINEER for the Work from time to time. In its sole discretion, the OWNER may act in the stead of the ENGINEER, exercising any of the rights or responsibilities of the ENGINEER provided under the Contract Documents, so long as the OWNER provides notice to the CONTRACTOR of its intent to do so. In its sole discretion, the OWNER may delegate any of the rights and responsibilities of the ENGINEER to a third party, who for the purposes of rights and responsibilities so delegated, shall be governed by the Contract Documents, so long as the OWNER provides notice to the CONTRACTOR of its intent to do so.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions. The ENGINEER's Consultant is [REDACTED] and any other party to a subcontract with ENGINEER in connection with the Work.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but

which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The Town of Holly Springs, a municipal corporation in North Carolina, and its successors and assigns, and is the party for whom the work is to be performed. The Owner's Representative is **the Town Manager of the Town of Holly Springs**. The Owner's Representative may be an employee, agent or other representative of the OWNER, and may be an individual or any one of several identified individuals, or a committee or entity, in which case the committee or entity shall select one or more individuals to speak and act on its behalf and on behalf of the OWNER. The OWNER's

REPRESENTATIVE has the express authority to bind OWNER with respect to all matters requiring the OWNER's approval or authorization. Except as otherwise specifically stated, the ENGINEER does not have such authority. The term 'OWNER' means the OWNER or OWNER's REPRESENTATIVE.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and

easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto. Specifications shall include all Sections included under the Technical Specifications of the Project Manual.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, and with the approval of the OWNER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof. The OWNER's receipt of all certificates of occupancy and approvals by regulatory agencies applicable to the Project is a condition precedent to the Project being deemed 'Substantially Complete'.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions, whether titled the 'Supplementary Conditions,' the 'Special Conditions,' 'Supplementary or Special Conditions,' or otherwise. Unless otherwise indicated, Special Conditions amend and/or supplement the General Conditions as already amended and/or supplemented by Supplementary Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary or appropriate to produce such construction, and furnishing, installing, and incorporating all necessary or appropriate materials and equipment into such construction, all as required and more specifically described in the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

51. *Conditions of the Contract*--The combined General Conditions and Supplementary Conditions, including the Special Conditions.

52. *Project Manual*--The Advertisement for Bids, Instructions to Bidders, Bid Forms, Agreements, Bonds, General Conditions, Supplementary Conditions, Special Conditions, Specifications, and Appendices.

53. *General Contractor*--The Contractor responsible for all Work other than Electrical, Instrumentation, HVAC, and Plumbing Work, as defined in the Contract Documents.

54. *HVAC Contractor*--The Contractor responsible for all HVAC Work as defined in the Contract Documents.

55. *Plumbing Contractor*--The Contractor responsible for all Plumbing Work as defined in the Contract Documents.

56. *Electrical Contractor*--The Contractor responsible for all Electrical and Instrumentation Work as described in the Contract Documents.

57. *Single Prime Contractor*--If the project is awarded as a Single Prime Contract, then the terms General Contractor, HVAC Contractor, Plumbing Contractor, and Electrical Contractor shall be understood to refer to the Single Prime Contractor.

58. *Preoperational Testing*--All field inspections, installation checks, water test, performance tests, and necessary corrections required of Contractor to demonstrate that individual components of the Work have been properly constructed and do operate in accordance with the Contract Documents for their intended purposes.

59. *Startup Testing*--A predefined trial period required for achieving substantial completion during which CONTRACTOR is to operate the entire Work (or any part thereof agreed to by the OWNER) under actual and simulated operating conditions for the purpose of (i) making such minor adjustments and changes to the Work as may be necessary for the Work to comply with the Contract Documents and (ii) complying with the final test requirements in the Contract Documents.

60. The 'Standard Specifications and Details' shall be the '*Town of Holly Springs Engineering Design and Construction Standards*,' that have been adopted as of the date of the work performed by the Contractor.

61. The 'NCDOT Standard Specifications' shall be the '*Standard Specifications for Roads and Structures*' and the '*Roadway Standard Drawings*,' current edition as of the date of the work performed by the Contractor.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective

to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

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

C. *Defective*

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

D. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used

in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. The Contract Documents shall be executed by the OWNER and the CONTRACTOR in four (4) counterparts one (1) of which shall be returned to the CONTRACTOR. Additional copies will be furnished upon request at the cost of reproduction and handling to be borne by the CONTRACTOR.

B. The ENGINEER shall provide the CONTRACTOR with three (3) copies of any revised plans, Drawings, and Specifications as may be required

2.03 *Commencement of Contract Times; Notice to Proceed*

A. Notice to Proceed will be given in the timeframe indicated in the Bid Proposal or Notice to Bidders. The Contract Times will commence at the time specified in such Notice to Proceed.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done, including materials supplied, at the Site prior to the date on which the Contract Times commence to run without express written consent of the OWNER.

2.05 *Before Starting Construction*

A. *CONTRACTOR’s Review of Contract Documents:* The data provided in the Specifications and shown on the plans and Drawings is believed by the ENGINEER or the OWNER to be accurate, but the accuracy is not guaranteed by the ENGINEER or the OWNER. The CONTRACTOR must take all levels, locations, and measurements, and verify all dimensions of the Site prior to construction, and adapt its Work to the exact construction. Scale measurements taken from prints shall not be considered except as references; the larger scale Drawings take

precedence over the smaller scale, and Shop Drawings take precedence over all others. All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as otherwise directed by the ENGINEER. Elevations of existing ground, structures and appurtenances shown on Drawings and Specifications are presented only as an approximation. Any error or apparent discrepancy in the data shown, or omissions of data, shall be referred immediately to the ENGINEER for interpretation or correction. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless and until CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR shall deliver to OWNER, with copies to the ENGINEER and each additional insured identified in Article 5, as supplemented and amended by the Supplementary Conditions, certificates of insurance (and other evidence requested by the OWNER) that

CONTRACTOR is required to purchase and maintain in accordance with Article 5.

D. Execution of the Contract by the CONTRACTOR is a representation by the CONTRACTOR that the CONTRACTOR has visited the Site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract.

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, or any materials or equipment are delivered to the Site, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records. The ENGINEER shall notify the CONTRACTOR of the place, date and time of the conference. The CONTRACTOR, its project manager, its superintendent, and any of the CONTRACTOR's other Project coordinators, representatives or other parties whose work on the Project would benefit from the conference shall attend.

B. Construction Conferences. The following conferences with the ENGINEER or the OWNER shall be held to ensure that the Work progresses appropriately and that the OWNER and the Architect are kept apprised of the status of the Work throughout the duration of the Project:

1. Preconstruction Conference. A preconstruction conference shall be held after the award of the Contract and prior to commencement of the Work or delivery of materials or equipment to the Project site. The ENGINEER shall notify the Contractor of the place, date and time of the meeting. The Contractor, its project manager, its superintendent, and any of the Contractor's other Project Coordinators, representatives or other parties whose work on the Project would benefit from the conference shall attend. The OWNER and ENGINEER will attend this conference. The Contractor, major subcontractors, and Contractor's safety representative shall attend this conference. The resumes of both the Contractor's project manager and superintendent shall be submitted to the OWNER for review and approval prior to the conference. The project manager and superintendent shall have at least 2 years experience managing and supervising the type of construction work specified in the Contract

Documents. No work shall be allowed until the Project Superintendent is on-site and working on this project. The conference agenda will include, as a minimum: tentative construction schedule; critical work sequencing; designation of responsible personnel; processing of field decisions; proposal requests and change orders; adequacy of distribution of Contract Documents; submittal of shop drawings and samples; procedures for maintaining record documents; use of site and OWNER's requirements; material deliveries and storage areas; major equipment and material deliveries and priorities; safety; security; housekeeping procedures; partial payment processing; general regard for community relations.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule may be a critical path type or any other system likely to provide equivalent results. The progress schedule shall account for all Work to be performed under subcontracts. The progress schedule shall provide for the proper sequence of construction, considering various crafts, purchasing times, shop drawing approval, material delivery, equipment fabrication, and similar time-consuming factors. The progress schedule shall show as a minimum, earliest starting, earliest completion, latest starting, latest completion, and the total float times for each task or item. The progress schedule will be acceptable to ENGINEER if it provides all of the foregoing and an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable

to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

B. The construction schedule shall be evaluated by the Contractor not less than monthly. An updated and corrected progress schedule shall be submitted to the ENGINEER in triplicate and shall show any rescheduling necessary to reflect the true job conditions. This updated progress schedule shall be submitted monthly to the ENGINEER with the Contractor's pay request. When the shortening of various time intervals is necessary to correct for behind-schedule conditions, the Contractor shall indicate the steps necessary to accomplish the Work in the shortest schedule possible. Information regarding the new time intervals and the reasons for them shall be submitted to the ENGINEER in writing with the revised schedule. Notwithstanding anything apparently to the contrary in the Contract Documents, the ENGINEER may withhold progress payments until such time as the progress schedule or revised progress schedule, if applicable, is received.

2.08 Construction Conferences

A. Regular construction conferences shall be held with the ENGINEER or the OWNER to ensure that the Work progresses appropriately and that the OWNER and the ENGINEER are kept apprised of the status of the Work throughout the duration of the Project.

1. Monthly Progress Meetings. Each prime contractor is required to attend monthly, or more frequently as specified in the contract, progress conferences called or scheduled by ENGINEER at the Project Site. Each prime contractor shall be represented at these meetings by both its home office and Project personnel. These representatives shall have the authority to act on behalf of the Contractor. The meetings shall be open to the Subcontractors, materials suppliers, utility company representatives and any others whose presence and participation would contribute toward maintaining required job progress. It shall be the principal purpose of these meetings to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified Contract Time(s). Each prime contractor shall be prepared to assess the progress of the Work as required in its

particular contract and to recommend remedial measures for correction of the progress as may be appropriate. The ENGINEER, or the representative thereof, shall be the coordinator of the conferences and shall provide as chairman. The ENGINEER will record minutes of the proceedings and decisions, and will distribute copies of minutes to attendees. The OWNER and ENGINEER will attend this meeting. The Contractor shall attend this meeting. The agenda will include, as a minimum: review and approve minutes of the previous meeting; review progress of work since last meeting; review proposed 30-60 day construction schedule; field observations, problems and conflicts; problems that impede planned progress; corrective measures and/or procedures to regain projected schedule; revise construction schedule as indicated and plan progress during the next work period; submittal status; pending changes; maintenance of quality and work standards; status of community relations and complaint resolution; complete other current business; schedule next progress meeting.

2. Weekly Coordination Meetings. The Contractor shall meet with the ENGINEER at least once per week to ensure efficient coordination of the various aspects of the Work being performed.

3. Other Required Meetings. As the ENGINEER or the OWNER believes it is appropriate and would be helpful to maintaining the efficiency and quality of the Work, the ENGINEER or the OWNER may schedule a meeting with the Contractor and any other parties. The Contractor shall ensure proper representation at such meetings to effect their purpose, including sending any specific personnel requested by the ENGINEER or the OWNER. Notwithstanding the foregoing, if the Contractor reasonably believes that the progress or quality of the Work will or might be impeded by attendance at the meeting, then the party calling such meeting shall work with the Contractor to reschedule it for a mutually convenient time.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete and operable Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

D. Each and every provision of law and clause required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though included herein. If through mistake or otherwise, any such provision is not inserted correctly, then upon application of either party, the Contract Documents shall forthwith be physically amended to correct such insertion. If such physical amendment does not occur, however, the correct provision shall be deemed to have been inserted.

3.02 Reference Standards

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids or, if Laws or Regulations are different at the time of the Work, then those Laws or Regulations in effect at the time of the Work (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies.* Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of any standard, specification, manual, code, or instruction of any technical society, organization or association if the standard, specification, manual, code or instruction imposes a weaker or less stringent standard or obligation upon the Contractor or any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work than the Contract Documents appear to impose; otherwise, the standard, specification, manual, code or instruction of any technical society, organization or association shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of such standard, specification, manual, code or instruction.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the

following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

C. The Drawings may be supplemented from time to time with additional Drawings by the ENGINEER as required to illustrate the Work, or as the Work progresses, with additional Drawings by the CONTRACTOR, subject to the approval of the ENGINEER. Supplementary Drawings, when issued by the ENGINEER or by the CONTRACTOR, after to the approval by the ENGINEER, shall be deemed a part of the Drawings and shall be furnished in sufficient quantity to all those who, in the opinion of the ENGINEER, are affected by such Drawings.

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

3.06 Organization of the Documents.

A. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings, shall not control the CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade or party.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically

related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

D. If all lands, easements and rights-of-way are not obtained as herein contemplated before construction begins, CONTRACTOR shall begin the Work upon and within such lands, easements and rights-of-way as OWNER has at that time acquired.

4.02 Subsurface and Physical Conditions

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

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is provided in the Specifications and Drawings and may be further identified in the Project Manual or Special Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim

against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

C. *No Reliance by CONTRACTOR on Reports of Subsurface Investigations.* In the preparation of Drawings and Specifications, the ENGINEER has relied upon reports of subsurface investigations as may be attached to the Contract Documents. Such reports are not part of the Contract Documents.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in

connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments:* Subsurface information, if provided by the OWNER to the CONTRACTOR, is provided for the sole purpose of placing the CONTRACTOR in receipt of all information available to the OWNER and the ENGINEER, and such information is not to be considered part of the Contract Documents. The CONTRACTOR acknowledges that it has interpreted the subsurface information according to its own judgment in bidding the Work and that it did not rely on the subsurface information provided to it in making its bid. The CONTRACTOR acknowledges that it assumes all risks contingent upon the nature of the subsurface conditions actually to be encountered by it in performing the Work required by the Contract, even though such actual conditions may result in the CONTRACTOR performing more or less Work than originally anticipated. Unless the OWNER specifically agrees in writing, neither the Contract Time(s) nor the Contract Price(s) shall be adjusted based on basis of the actual subsurface conditions being different than as revealed in the subsurface information provided to the CONTRACTOR by the OWNER.

4.04 *Underground Facilities*

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

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point, survey markers, property corners, right of way monuments or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by a North Carolina Professional Land Surveyor (PLS).

B. ENGINEER may check lines, elevations, reference marks, batter boards, and the like, set by CONTRACTOR. CONTRACTOR shall correct any errors disclosed by such check as directed by the ENGINEER. No such check shall be deemed an approval of CONTRACTOR's work, nor shall it relieve CONTRACTOR of the responsibility for accurate construction of the entire Work. CONTRACTOR shall furnish personnel to assist ENGINEER in checking lines and grades. If CONTRACTOR through the course of its Work discovers information leading it to believe that such reference points are in error or that there has been a mistake in survey data, CONTRACTOR shall immediately notify ENGINEER and OWNER.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Project Manual Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Project Manual Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by

CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Except as otherwise described in the Contract Documents, CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, provided that CONTRACTOR uses reasonable care in its operation equivalent to the care used by similar contractors in the locality. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible, and (iii) was known by the OWNER to exist. Nothing in this paragraph 4.06.G shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.H shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.07 Existing Utilities

A. The CONTRACTOR shall be responsible for the location and verification of all utilities prior to construction, both public and private, within the Site. Prior to commencing construction, the CONTRACTOR shall walk the Site verifying the location of all utilities in order to determine which utilities the CONTRACTOR may deem to be in conflict with the Work. At the completion of the walk-through, the CONTRACTOR shall notify the ENGINEER in writing of any such conflicts. The CONTRACTOR shall also attend monthly progress meetings with the OWNER or ENGINEER, and utility company representatives, if appropriate, to discuss potential and/or existing conflicts on all roadway and utility portions of the Work, unless such meeting is waived for a particular month or for the duration of the Project by the ENGINEER. At the option of the OWNER, such meetings may occur in connection with any monthly progress meetings established pursuant to Subparagraph 2.08A.2.

B. Where existing utilities and structures are indicated on the Drawings, it shall be understood that all of the existing utilities and structures affecting the Work may not be shown and that the locations of those show are approximate only. It shall be the responsibility of the CONTRACTOR to ascertain the actual extent and exact location of the existing utilities and structures. In every instance, the CONTRACTOR shall notify the proper authority having jurisdiction and obtain all necessary directions and approvals before performing any Work in the vicinity of existing utilities.

C. The Work shall be carried out in a manner to prevent disruption of existing services and to avoid damage to existing utilities. Temporary connections shall be provided, as required, to ensure that no interruption of existing services occurs. Any damage resulting from the Work shall be promptly repaired by the CONTRACTOR at its own expense in a manner approved by the ENGINEER and further subject to the requirements of any authority having jurisdiction. Where it is required by the authority having jurisdiction that such jurisdiction perform its own repairs or have them done by others, the CONTRACTOR shall be responsible for the costs thereof.

4.08 Miscellaneous Site Conditions

A. Construction Staking and Surveying. The OWNER will perform all construction surveying and staking as called for in the Contract Documents unless a bid

item for construction surveying is included in the itemized Proposal. All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as directed by the ENGINEER. Elevations of existing ground, structures and appurtenances are believed to be absolute and therefore are presented only as an approximation. Any error or apparent discrepancy in the data shown or omissions of data required for accurately accomplishing the stake-out survey shall be referred immediately to the ENGINEER for interpretation or correction.

B. The CONTRACTOR shall provide and maintain substantial survey markings delineating easement and property boundaries during construction. These markings shall be in place and approved by the ENGINEER prior to beginning construction activities.

C. Water for Construction. Water needed for construction of the Work may be obtained from the Town of Holly Springs at no charge to the CONTRACTOR. The CONTRACTOR shall be responsible for transporting the water. The CONTRACTOR shall contract the Holly Springs Department of Public Works to have a hose and meter installed so as to obtain water. The CONTRACTOR shall not operate any main valve or fire hydrant on the Town water system except in accordance with Town of Holly Springs Policy Statement No. P-005.

D. The CONTRACTOR is advised to perform video inspections and take photographs of the proposed construction areas before disturbing the Site in order to establish an accurate record of the pre-construction conditions for comparison to the final restoration work.

E. The CONTRACTOR shall continually notify members of the public that own or occupy private property that may be affected by the schedule Work that affects their property. The OWNER will distribute a letter to all property owners that will be affected by the proposed Work describing the Project. When construction begins, the CONTRACTOR shall notify residents at least 72 hours in advance of when their property will be directly affected by the Work, with continual updates as required by the progress of the Work. In the event of planned utility service disruptions, the Town's Public Works and Utilities Department, or other affected utility provider, shall also be notified. At a minimum, the CONTRACTOR shall distribute door hangers to all residents in the affected area before mobilizing on the Site and then distribute follow-up notices at least 3-days before residents are directly affected by the planned Work. The door hangers shall be provided by the OWNER and will include information deemed to be necessary by the OWNER.

ARTICLE 5 - BONDS AND INSURANCE

5.00 Evidence of Bonds and Insurance Required Prior to the Work

A. All evidence of bonds and insurance required in this Article shall be provided prior to the CONTRACTOR or its Subcontractors commencing the Work or making or accepting delivery of materials or equipment to the Site. Failure of the CONTRACTOR to timely obtain and deliver evidence of bonds and insurance as described herein shall not excuse CONTRACTOR from adhering to the progress scheduling for the Work, and any such resulting failure of the CONTRACTOR to adhere to the progress schedule or the Contract Times shall entitle the OWNER to such sanctions and remedies as are provided elsewhere in the Contract Documents for insufficient progress on the Work.

5.01 Performance, Payment, and Other Bonds

A. Concurrent with the execution of this Contract, CONTRACTOR shall furnish and maintain, at the CONTRACTOR's cost and expense, performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due pursuant to Paragraph 14.07.C, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within five (5) business days thereafter substitute another

Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also be approved by the OWNER and meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

B. The CONTRACTOR shall provide to the OWNER, insurance certificates or other evidence that all Subcontractors are carrying the required insurance. In lieu of each Subcontractor being required to carry the necessary insurance, the CONTRACTOR may insure the activities of its Subcontractors under its policy(ies). In such case, evidence of such coverage shall be provided on the CONTRACTOR's insurance certificates. Subcontractors shall in all cases, however, provide workers' compensation and employer's liability insurance and motor vehicle liability insurance.

C. An authorized representative of the insurance company(ies) providing coverage required herein shall certify that all of the required insurance coverages and amounts specified in the Contract Documents are provided by the submitted policies. The certification shall be signed by the authorized representatives of the insurance company(ies) and notarized. The authorized representative of the insurance company(ies) shall specifically indicate with the submittal which of the policies submitted fulfill which specific coverage and amounts specified under Sections 5.04 and 5.05 of the Contract. The certification, including the correlation, shall be furnished and included with the insurance certificates. One (1) copy of each such insurance policy and the certificates indicating each type of

coverage mentioned, and the correlation between the insurance furnished and that required, shall be provided to each insured party.

The insurance required to be provided by the Contractor (except Worker's Compensation and Employer's Liability insurance) shall name the following as additional insureds as primary without contribution:

- The Town of Holly Springs
- Architect
- Engineer
- Architect's or Engineer's Consultant
- Other: _____

5.04 CONTRACTOR's Liability and Property Insurance

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle in the prosecution of the Work.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07;

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR

shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter);

8. include builder's risk/fire and extended coverage insurance, including coverage for vandalism and malicious mischief for the life of the Contract upon all Work in place and all materials at the Site;

9. include special hazards insurance covering bodily injury and property damage resulting from blasting and explosions, collapse of or structural injury to any structure, and damage to underground structures, pipes or conduits due to the CONTRACTOR's or its Subcontractor's operations;

10. contain provisions or endorsements that:

a. the OWNER shall be notified in writing within thirty (30) days after the filing of each claim under such policy;

b. full coverage shall be reinstated after payment of each claim;

c. the insurer shall have no right of recovery or subrogation against the OWNER, its agents or agencies, or the ENGINEER, it being the intention of the parties that the insurance policies shall protect both the OWNER and the ENGINEER and be primary coverage for any and all losses covered by the policies;

d. the clause "other insurance provisions" in a policy in which the OWNER, its agents or agencies, or the ENGINEER is named as an insured, shall not apply to such insured parties;

e. the insurance companies issuing the policy or policies shall have not recourse against the OWNER, its agents or agencies, or the ENGINEER for the payment of any premiums or for assessments under any form of policy and

f. any all deductibles under the insurance policies shall be assumed by and be at

the sole risk and expense of the CONTRACTOR;

and

11. contain the following Indemnification Agreement, endorsed on the reverse sides of all certificates of insurance:

‘Indemnification – To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their agents, consultants and employees from and against all claims, damages, losses and expenses, including but not limited to attorney’s fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (b) is due to damage caused in whole or in part by any negligent act or omission of CONTRACTOR, and Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not a party indemnified hereunder is partially negligent, or arises out of operation of law as a consequence of any act or omission of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether any of them has been negligent; provided, however, that no party shall be entitled to indemnification with respect to such party’s own negligence. This provision is intended to indemnify to the fullest extent permitted by law both OWNER and ENGINEER independently of the negligence of the other and thus the OWNER’s negligence shall not preclude indemnification by CONTRACTOR of the ENGINEER, and ENGINEER’s negligence shall not preclude indemnification by CONTRACTOR or OWNER.

C. SPECIFIC INSURANCE REQUIREMENTS

1. The CONTRACTOR shall provide insurance coverage for the Town as additional insured to be treated as primary insurance without contribution in amounts not less than the following amounts, and greater coverage where required by law.

Check if Required	Insurance	Minimum Coverage
√	Worker’s Compensation	[Statutory Minimum]
√	Employer’s Liability	\$1,000,000
	Comprehensive General Liability including Premises/Operations; Explosion, Collapse and Underground Property Damages; Products/Completed Operations; Broad Form Contractual; Independent Contractors; Broad Form Property Damage; and Personal Liability;	
√	(1) Bodily Injury	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
√	(2) Property Damage	\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate
√	(3) Personal Injury, with employment exclusion deleted	\$1,000,000 Annual Aggregate
	Comprehensive Motor Vehicle Liability, including all owned (private and others), hired and non-owned vehicles used in the Work:	
√	(1) Bodily Injury	\$1,000,000 Each Person \$2,000,000 Each Accident
√	(2) Property Damage	\$1,000,000 Each Occurrence
√	Completed Operations Hazard Insurance	Contract [Sum or Price] or \$1,000,000 if greater
	Builder’s Risk/Fire and Extended Coverage, including vandalism and malicious mischief	Contract [Sum or Price] or \$1,000,000 if greater
√	Special Hazards Insurance, including coverage for “boiler and machinery”, “blasting and explosion”, “collapse of structure” or “injury to any structure due to contractor’s operations” and “damage to underground structures.	Contract Amount or \$1,000,000, whichever is greater
√	Umbrella Liability	\$5,000,000 per occurrence and policy aggregate

2. The comprehensive general liability insurance and compensation motor vehicle disability insurance shall include OWNER, its agents and agencies, ENGINEER and ENGINEER’s Consultant and all municipalities where Work is being performed as additional insureds as primary without contribution. The insurance policies required hereunder shall not contain any third-party benefit exclusion.

3. CONTRACTOR may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with this Paragraph. Evidence of such excess liability shall be delivered to OWNER in the form of a certificate indicating the policy numbers and limits of liability of all underlying insurance. The umbrella liability insurance shall have a combined single limit of not less than \$5,000,000.

4. If any of the property and casualty insurance requirements described herein are not complied with at the renewal dates of the insurance policy(ies), then payments to the CONTRACTOR shall be withheld until all requirements have been met, or, at the option of the OWNER, if the renewal premiums have not been paid, then the OWNER may pay the renewal premiums and withhold the cost thereof from any monies due to the CONTRACTOR.

5. In the event that claims in excess of the coverage amounts provided herein are filed by reason of any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due to the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the OWNER.

6. The CONTRACTOR shall submit to the OWNER documentation as to the cost of insurance coverage required hereunder prior to obtaining the policy(ies). The OWNER may, if it deems it to be in its best interest, obtain a portion or all of the coverage on its own and receive a credit from the CONTRACTOR against the Contract Sum for the cost of the insurance so provided by the OWNER.

5.05 OWNER's Liability Insurance

A. CONTRACTOR shall purchase and maintain a separate OWNER's Protective Liability policy, issued to OWNER at the expense of CONTRACTOR, including OWNER and ENGINEER as named insured as primary coverage without contribution. The CONTRACTOR shall provide the OWNER with a certificate of insurance for the policy prior to the effective date of the Contract. The Certificate shall state that the policy cannot be canceled or terminated while the Work under this Contract, and any renewals thereof, is still in progress without 30 days' notice to the OWNER, who shall have the option of reinstating the policy. The CONTRACTOR shall provide renewal certificates no later than 30 days prior to the expiration of date of the policy. The policy of insurance shall provide coverage for not less than the following amounts:

- 1. Bodily Injury \$1,000,000 Each Occurrence
- 2. Property Damage \$1,000,000 Each Occurrence
- \$1,000,000 Annual Aggregate

5.06 Additional Insurance

A. OWNER, CONTRACTOR and ENGINEER, each at their own option and expense, may purchase and maintain any additional insurance it deems necessary or prudent to protect its interests in connection with the Work. Expenses of such insurance and any deductibles shall not constitute a portion of the Contract Price but are to be borne entirely by the party obtaining such insurance.

5.07 Waiver of Rights

- A. Intentionally Omitted.
- B. Intentionally Omitted.
- C. Intentionally Omitted.

5.08 Intentionally Omitted.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with this Article 5 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing thereof within ten (10) days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.05. CONTRACTOR shall provide such additional information in respect of insurance provided by CONTRACTOR as OWNER may reasonably request. Failure of OWNER to notify CONTRACTOR of its objection shall not constitute a waiver of any condition of a bond, insurance coverage, or any other covenant contained in in the Contract Documents.

5.10 Intentionally Omitted.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall

not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents, unless the CONTRACTOR knew or should have known of a mistake, error, flaw, miscalculation, or the like, in the design or specification at the time of the making of the Agreement and failed to notify the OWNER and ENGINEER thereof. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

C. *Project Manager and Superintendent:* The CONTRACTOR's project manager and the CONTRACTOR's superintendent shall be full-time employees of the CONTRACTOR. The project manager and the superintendent shall each have a minimum of five years' experience constructing projects similar to the Project. The project manager's and the superintendent's previous work performances must, respectively, be acceptable to the OWNER as to quality of workmanship and time of performance. The CONTRACTOR shall submit resumes of the project manager and the superintendent to the OWNER at the time the Contract is signed. If either person is or becomes unacceptable to the OWNER, the CONTRACTOR, upon written demand by the OWNER, shall promptly notify the remove the unacceptable person and shall appoint a replacement satisfactory to the OWNER.

D. *Multi-prime Contract Projects:*

1. The general contractor, or any other contractor specifically named by OWNER, shall act as the Project Expediter, responsible for preparing the Project Schedule, including coordinating the progress schedules of the other prime contractors and their subcontractors, ensuring that each prime contractor and subcontractor adheres to its schedule, and communicating regularly with the ENGINEER or the OWNER regarding any concerns that arise during the course of the Project, including, without limitation, the scheduling, adherence to the Drawings, the Specifications and/or the Project Manual.

2. All prime contractors shall be required to cooperate and consult with other contractors and with the Project Expediter during the construction of the Project. Each prime contractor shall schedule and execute its portion of the Work so as to cause the least delay to other contractors. Each prime contractor shall be financially responsible to the other prime contractors for undue delay caused by it to other prime contractors and subcontractors on the Project.

6.02 Labor; Working Hours

A. CONTRACTOR is responsible for expediting the Work efficiently and effectively and with due care to the quality of the Work. CONTRACTOR shall ensure that at least half of the Work is performed with CONTRACTOR's employees. CONTRACTOR shall employ only competent, suitably qualified persons to perform the Work. CONTRACTOR shall at all times maintain good discipline and order at the Site. Whenever OWNER notifies the CONTRACTOR in writing that any person on the Project appears to be incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with the prior written consent of OWNER. No adjustment shall be made in the Contract Price or the Contract Times on the basis of the removal of such person from the Project.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER. 'Regular Working Hours' are defined as 8 hours per day, Monday through Friday, excluding holidays, between the hours of 7:00 AM and 6:00 PM. Requests to work other than Regular Working Hours shall be submitted to ENGINEER not less than 48 hours prior to any proposed additional daily working hours (including second and third shifts), weekend work or scheduled extended work weeks. All requests to work other than Regular Working Hours must comply with all applicable regulations and ordinances. ENGINEER shall review requests, and ENGINEER shall either (1) deny the request or (2) provide CONTRACTOR with terms for additional engineering and/or inspection costs to be paid for by CONTRACTOR as a result of overtime work in excess of the Regular Working Hours. CONTRACTOR shall agree to ENGINEER's terms prior to ENGINEER approving CONTRACTOR's request to work other than Regular Working Hours.

C. This Agreement is subject to the applicable provisions of the Contract Work Hours and Safety Standards Act, Public Law 87-581, 87th Congress. Neither the CONTRACTOR nor any Subcontractor contracting for any part of the Work shall require or permit any laborer or mechanic to be employed on the Work in excess of forty hours in any Work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times that person's basic rate of pay for all hours worked in excess of forty hours in such work week.

D. CONTRACTOR and all Subcontractors shall, insofar as practicable, give preference in the hiring of workers for the Project: 1) according to Minority Outreach Plan as specified in the Contract Documents; and 2) to qualified local residents, with first preferences to give to citizens of the United States who have served in the armed forces of the United States and have been honorably discharged therefor or released from active duty therein.

E. The cost of such overtime Work or the performance of Work on a Saturday, Sunday, or any legal holidays shall be borne by the CONTRACTOR. CONTRACTOR shall reimburse the OWNER for additional engineering and/or inspection costs incurred as a result of overtime work in excess of the Regular Working Hours stipulated herein. At OWNER's option, overtime costs may either be deducted from the CONTRACTOR's monthly payment request or deducted from the CONTRACTOR's retention prior to release of final payment. Overtime costs for the OWNER's personnel shall be based on the individual's current overtime wage rate. Overtime costs for personnel employed by the ENGINEER or OWNER's employees or independent testing laboratory shall be calculated in accordance with the terms of their respective contracts with the ENGINEER or the OWNER.

F. Temporary lighting and all other facilities necessary for performing and inspecting the Work outside of Regular Working Hours shall be furnished and maintained by the CONTRACTOR at the CONTRACTOR's expense.

G. Work shall not be performed when the weather is inclement, stormy, freezing or otherwise unsuitable. Only such Work as will not suffer injury to workmanship, materials or equipment is permitted. The CONTRACTOR shall carefully protect all Work against damage or injury from the weather, and when Work is permitted during freezing weather, shall provide and maintain approved facilities for heating the materials and equipment and for protecting the finished Work. The CONTRACTOR shall take all necessary precautions (in the event of impending storms) to protect all Work, materials, and equipment from damage or deterioration due to floods,

driving rain, wind or snowstorms. The OWNER reserves the right, upon the advice of the ENGINEER, to order additional protective measures over and beyond those proposed by the CONTRACTOR be taken to safeguard all components of the Project. The CONTRACTOR shall have no right to, nor make any claim for compensation for such precautionary measures so ordered, nor have a right to make any claim for compensation from the OWNER for damage to the Work from weather elements.

H. The mixing and placing of concrete or pavement courses, the laying of masonry, and installation of sewers and water mains shall be stopped during rainstorms, if ordered by the ENGINEER; all freshly placed Work shall be protected by canvas or other suitable covering in such manner as to prevent running water from coming in contact with it. Sufficient coverings shall be provided and kept ready at hand for this purpose. CONTRACTOR shall not be entitled to an increase in Contract Times due to Work stoppage and other time not spent working pursuant to this Paragraph.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. The CONTRACTOR shall provide temporary toilet facilities for the use of all workmen. Temporary toilet facilities shall comply with local and state sanitation laws and regulations.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents. All construction shall conform (in increasing order of priority in the event of any conflict) to the requirements and dimensions in the Town of Holly Springs 'Engineering Design and Construction Standards', the Town Code of Holly Springs, this Contract, the construction plans, and the Specifications. All materials and workmanship, except as

otherwise provided herein, shall be in accordance with the latest edition of the North Carolina Department of Transportation 'Standard Specifications for Roads and Structures,' and all addenda thereto, and the Town of Holly Springs 'Engineering Design and Construction Standards.'

C. *Delivery of Equipment and Materials:* All materials and equipment delivered to the Site shall be accompanied by certificates, signed by an authorized officer of the Supplier, and notarized, guaranteeing that the materials and equipment conform to Specifications requirements. Such certificates shall be immediately turned over to the ENGINEER. Materials and equipment delivered to the Site without such certificates shall be subject to rejection by the ENGINEER. The CONTRACTOR shall ensure that equipment and materials to be incorporated in the Work shall be delivered to the Site sufficiently in advance of their installation and use in order to prevent delay in the execution of the Work, and that they shall be delivered to the Site, as nearly as is feasible, in the other required for executing the Work. The CONTRACTOR shall provide for continuity of supply to avoid changes of supplies or manufacturers or changes in brands of materials during the Work. The CONTRACTOR shall deliver packaged materials to the Site in the manufacturer's original, unopened, labeled containers and shall not open such containers until the approximate time for the use of the contents.

D. *Storage and Protection of Equipment and Materials:* The CONTRACTOR shall protect all equipment and materials from deterioration and damage. Any equipment or materials of whatever kind that may have become damaged or deteriorated from any cause shall be removed and replaced by new and satisfactory items, at the CONTRACTOR's expense, including expenses of labor and materials for such removal and replacement. The CONTRACTOR shall store all equipment and materials at the Site in accordance with the manufacturer's recommendations, as directed by the ENGINEER, and in conformity with applicable statutes, ordinances, regulations and rulings of any public authority having jurisdiction. The CONTRACTOR shall store the cementitious and wood materials in dry, weather-tight, ventilated spaces. The CONTRACTOR shall store ferrous materials so as to prevent contact with the ground and to prevent rusting and damage from weather. The CONTRACTOR shall store masonry materials so as to prevent them from coming in contact with earth or staining materials and shall cover and protect such materials against weather, moisture, neglect and damage. The CONTRACTOR shall protect materials and equipment from equipment damage, weather, moisture, neglect, and construction operations. The CONTRACTOR shall store all equipment and materials at the Site in accordance with the manufacturer's recommendations, as directed by the ENGINEER, and in conformity with

applicable statutes, ordinances, regulations, and rulings of any public authority having jurisdiction. The CONTRACTOR shall not store unnecessary materials or equipment on the Site and shall take care to prevent any structure from being loaded with a weight that may endanger its security or the safety of persons or property. If the Site is such that equipment and materials cannot be safely stored at the Site, then the CONTRACTOR shall be responsible for locating and providing storage areas for equipment and materials. Such storage shall comply with all applicable statutes, ordinances, regulations and rulings of public authorities having jurisdiction.

E. *Hazardous Material:* The operations of neither the CONTRACTOR nor any Subcontractor shall expose any Town of Holly Springs employees or other person to any hazardous chemicals or other occupational safety or health hazards. The CONTRACTOR shall inform the ENGINEER about any hazardous substances that the CONTRACTOR or the Subcontractors might be using and to which the Town of Holly Springs' employees might become exposed. The CONTRACTOR shall also advise the ENGINEER of the appropriate control measures to be used by the Town of Holly Springs' employees to prevent exposure to such substances and to minimize the risks of such exposure. The OWNER shall not be responsible for any improper use of materials or substances referenced in the Contract Documents nor for any materials or substances brought to the Site by the CONTRACTOR.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

B. If the CONTRACTOR does not take the necessary action to accomplish the Work according to the progress schedule established in accordance with Paragraph

2.07, the CONTRACTOR may be ordered by the ENGINEER in writing to take necessary and timely action to improve its Work progress, and CONTRACTOR shall take such action. The ENGINEER's order may include increasing Work forces, providing extra equipment, working extra shifts, or taking other action as required. Should the CONTRACTOR refuse or neglect to take such action or fail to accomplish improvements in meeting the progress schedule, the ENGINEER may take any action authorized under this Contract, including but not limited to withholding of payment of the Contract Price and termination of the Contract.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. It is the intent of the parties that the CONTRACTOR shall provide materials of the highest standard known to the trade and to provide materials free from defects in workmanship and product. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *"Or-Equal" Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it

will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use, at least 14 days before such substitute item of material or equipment is to be brought to the Site. The application shall include sufficient documentation and samples to allow the ENGINEER to determine the acceptability of the proposed substitute item of material or equipment. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of

any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2. The substitution shall not be allowed without written approval of the OWNER, in its sole discretion.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

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

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves

a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 Concerning Subcontractors, Suppliers, and Others

A. CONTRACTOR shall make a good faith effort to utilize minority business enterprises (MBEs) per North Carolina General Statutes Section 143-128, *et seq.*, as Subcontractor for the Work. CONTRACTOR shall submit for approval to the OWNER and the ENGINEER, within ten (10) days after the issuance of the Notice of Award, a list of the names of Subcontractors and Suppliers of principal items of material and equipment. CONTRACTOR shall also submit for approval to the OWNER and the ENGINEER a list of the names of any additional or replacement Subcontractors and Suppliers the CONTRACTOR wishes to use in connection with the Project prior to utilizing their services. The ENGINEER or OWNER shall notify the CONTRACTOR within ten (10) days after receipt of the list of any reasonable objections to any Subcontractor or Supplier. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER may have reasonable objection. Acceptance of any Subcontractor, other person or organization by OWNER shall not constitute a waiver of any right of OWNER to reject defective Work or remove such person from the Project pursuant to Paragraph 6.02.A.

B. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

C. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors,

Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

D. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR. Notwithstanding the foregoing, however, OWNER or ENGINEER may furnish to any such Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to CONTRACTOR in accordance with CONTRACTOR's application for Payment.

E. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

F. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or

G. entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device

is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. In the event of any claim or action by law on account of such patents or fees, it is agreed that the OWNER may retain out of the monies that are due or that may become due to the CONTRACTOR under this Contract, a sum of money sufficient to protect OWNER against loss, and to retain the same until said claims are paid or are satisfactorily adjusted.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, and the CONTRACTOR shall pay all charges of utility owners for connections to the Work.

6.09 *Laws and Regulations*

A. The CONTRACTOR shall, at all times, observe and comply with and cause all of its agents and employees and all of its Subcontractors to observe and comply with all such existing Laws or Regulations. The CONTRACTOR shall protect and indemnify the OWNER and the ENGINEER and the municipalities and counties in which Work is being performed, and their officers and agents, against any claim, fee, civil penalty, fine or liability arising from or based on the violation of any such Law or Regulation, whether by the CONTRACTOR or its employees or any of its Subcontractors. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be

responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, it shall give ENGINEER prompt written notice thereof. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work, including all fines, fees, charges, civil penalties and he like assessed against the CONTRACTOR and/or the OWNER by any governmental unit or agency (including, without limitation, the OWNER in its capacity as a municipal corporation); however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

D. *Fines for Noncompliance with Sedimentation and Erosion Control Regulations:* The CONTRACTOR should be aware that State laws and Town ordinances provide for the imposition of fines and other civil penalties for the failure to properly plan, implement and maintain appropriate sedimentation and erosion control practices. The CONTRACTOR shall familiarize itself with all applicable sedimentation and erosion control regulations and shall follow and abide by them closely. Applicable regulations include (by way of illustration and not limitation) North Carolina General Statutes Section 113A-50 *et seq.* and Town of Holly Springs Ordinances. Violations of such regulations include (by way of illustration and not limitation) grading without prior receipt of a valid grading permit or in a manner inconsistent with such permit, failure to take reasonable measures to protect public or private property from damage caused by failure to retain sediment on site, failure to install adequate erosion and sedimentation control devices, failure to maintain temporary and/or permanent erosion control measures, failure to protect exposed slopes, failure to provide adequate ground cover, failure to revise the erosion and

sedimentation control plan after notification of the need to do so, failure to keep dirt and mud off of public street, and failure to maintain slopes. Sedimentation and erosion control laws and ordinances shall be considered among the Laws and Regulations described in Paragraph 6.09.B. hereof, and CONTRACTOR shall perform all Work so as to be in compliance with same and pay all fees, fines and civil penalties in connection with the violation(s) of same that do occur. This provision is intended to call CONTRACTOR's attention to State and Town sedimentation and erosion control plans, and nothing herein is intended to impliedly limit the types of regulations deemed to be Laws and Regulations herein, nor is anything herein intended to limit the applicability of Paragraph 6.09.A or 6.09.B as to sedimentation and erosion control laws.

6.10 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Use tax is due on construction equipment brought into North Carolina for use in the performance of the Work (N.C. Revenue Laws G.S. 105-164.4 and 105-164.6). CONTRACTOR is also liable for payment of applicable privilege licenses (N.C. Revenue Laws G.S. 105-54) and for payment of applicable franchise, corporate income and withholding taxes (N.C. Revenue Laws, G.S. 105-122, 105-123, 105-134, and 105-163.2). The absence of mention of any specific tax herein in no way relieves the CONTRACTOR of its obligation to pay the same.

B. Refunds of all North Carolina sales and use taxes paid in the purchase of building materials, supplies, fixtures and equipment that become a part of or annex to buildings or structures being erected, altered or repaired under contracts with the OWNER are to be made to the OWNER in accordance with state law. Thus, the following procedures shall be followed in order that the OWNER may recover the full amount of the North Carolina sales use and taxes permitted to be refunded to it under the law.

1. It shall be the CONTRACTOR's responsibility to furnish the OWNER documentary evidence showing the material used and sales tax paid by the CONTRACTOR and each of its Subcontractors and Suppliers.

2. With each partial payment request submitted at the end of a calendar month, fiscal year or final payment, the CONTRACTOR must furnish (i) a certified and notarized statement setting forth the cost of the property purchased

from each vendor and the amount of sales and/or use tax paid thereon, and (ii) documentary evidence supporting the statement, including copies of invoices for which the statement is being submitted, with invoice numbers indexed to the statement.

3. The statement shall show all taxes and assessments paid to the State of North Carolina, the County of Wake, and the Town of Holly Springs, including the North Carolina Sales Tax and the Town of Holly Springs Tax, and the statement shall list any payments made directly to the North Carolina Department of Revenue.

4. In the event the CONTRACTOR makes several purchases from the same vendor, the statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid thereon.

5. Such statement must include the cost of any tangible personal property withdrawn from the CONTRACTOR's warehouse stock and the amount of sales or use tax paid thereon by the CONTRACTOR.

6. Similar certified statements by its Subcontractors must be obtained by the prime CONTRACTOR and furnished to the OWNER.

7. If no tax has been paid during the pay request period, "NONE" shall be entered on the tax form.

C. Materials used in the Project from the CONTRACTOR's or Subcontractor's warehouse stock shall be billed to the OWNER at warehouse stock prices.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Storage of equipment or materials, or erection and use of sheds outside of the Site, if such areas on are the property of the OWNER, shall be used only with the OWNER's approval. Such storage or temporary structures, even within the Site, shall be confined to the

OWNER's property. CONTRACTOR shall not utilize property other than the Site, including property designated as easement area or right of way area, unless specifically permitted elsewhere in the Contract Documents, without express permission of the owner thereof. Such permission of owners of other properties shall not be sought by the CONTRACTOR without the express permission of the OWNER to so approach such owners. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. Prior to commencement of Work in the vicinity of property adjacent to the Site, CONTRACTOR, at its own expense, shall take such surveys as may be necessary or expedient to establish the existing conditions of the property. Any damage or injury occurring to any property as a result of any act, omission or neglect on the part of the CONTRACTOR shall be repaired so that the property is restored in a proper and satisfactory manner, or replaced, by and at the expense of the CONTRACTOR, to an equal or superior condition than previously existed.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall be responsible for all costs in connection with the settlement of or defense against such claims. Before final payment under the Contract shall be made to the CONTRACTOR, the CONTRACTOR shall furnish satisfactory evidence to the OWNER that all claims for damage have been legally settled, that sufficient funds to cover such claims have been placed in escrow, or that an adequate bond to cover such claims has been obtained.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified

hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations, and shall include, without limitation, appropriate sedimentation control measures, as applicable. During construction, the CONTRACTOR shall regularly remove from the Site all accumulated debris and surplus of materials of any kind that result from its operations. Unused equipment and tools shall be stored at the CONTRACTOR's yard or base of operations for the Project. When the Work involves installation of sewers, drains, water mains, manholes, underground structures, or other disturbance of existing features in or across streets, rights of way, easements, or private property, the CONTRACTOR shall, as the Work progresses, promptly backfill, compact, grade, and otherwise restore the disturbed area to a basic condition that will permit resumption of pedestrian or vehicular traffic and any other essential activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed as promptly as possible so that the Site maintains a neat appearance.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site to a neat and orderly condition meeting or exceeding its appearance prior to construction, and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents. Failure to clean and prepare the Site in accordance with this Paragraph shall forestall CONTRACTOR's right to receive its final payment of the Contract Price. At the Contract Time for full performance of the Work, if the cleaning and preparation is not complete, OWNER may make arrangements for same with a third party. The CONTRACTOR shall reimburse the OWNER for all costs associated with such work in a deduction in the Contract Price or by direct payment from the CONTRACTOR to the OWNER, or a combination of both, at the option of the OWNER.

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

E. *Traffic to and from the Site:* The CONTRACTOR shall maintain traffic to, from and around the Site in accordance with the Town of Holly Springs Engineering Design and Construction Standards, Section 150 of the NCDOT 'Standard Specifications for Roads and Structures' and the following provisions: At the end of each workday, the CONTRACTOR shall backfill, up to the edge and elevation of existing pavement, any area adjacent to the travelway that has a drop off of more than three (3) inches. The CONTRACTOR shall perform this work at no additional cost to the OWNER. Access to the Site and properties adjacent to the Site shall be maintained at all times throughout the Project. Where driveways, mailboxes and/or other improvements are disturbed, temporary drives, mailboxes and/or other improvements if appropriate shall be installed immediately and maintained until such time as permanent repair to driveways, mailboxes and/or other improvements is made. An ABC stone base shall be used to maintain temporary driveways. No additional payment shall be made by the OWNER or other parties to the Contract for such temporary driveway construction and maintenance because such Work shall be considered incidental to the Contract and included in the Contract Price.

F. *Work in Streets, Highways and Other Rights of Way:* Excavation, grading, fill, storm drainage, paving and any other construction or installations in rights of way of streets, highways, public carrier lines, utility lines (either aerial, surface or subsurface), and the like, shall be done in accordance with the applicable portions of the Specifications and the requirements of the authorities having jurisdiction. The OWNER shall make all arrangements with the proper authorities for such Work, including the obtaining of permits, and shall pay costs associated with such, with the exception of electrical permits, blasting permits and inspections. The CONTRACTOR shall keep a copy of all required permits on the Site at all times. The CONTRACTOR shall be responsible for all bonds required by the North Carolina Department of Transportation.

G. *Final Clean-up and Site Rehabilitation:* Before leaving the Site upon completion of the Work, the CONTRACTOR shall remove from the Site all accumulated debris and surplus materials of any kind that result from the Project, including construction equipment, tools, sheds, sanitary enclosures, and the like. The completed Project shall be turned over to the OWNER in a neat and orderly condition. The Site shall be rehabilitated or developed in accordance with other sections of the Specifications and Drawings. In the absence of any portion of these requirements, the CONTRACTOR shall completely rehabilitate the Site to a condition and appearance equal or superior to that which existed just prior construction, except for those items whose permanent

removal or relocation was required in the Contract Documents or so ordered by the OWNER.

H. *Mail Service:* Mail service shall not be interrupted by construction activities. In the event that mailboxes are relocated or temporary removed, the CONTRACTOR must provide alternate methods as approved by the US Postal Service and the OWNER for property owners to receive uninterrupted mail service. There will be no separate payments issued for alternate measures required to maintain mail service.

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER. Failure to furnish the ENGINEER with accurate and detailed record documents shall be grounds for withholding final payment until such record documents have been properly furnished.

B. CONTRACTOR shall maintain 'as-built' record drawings, current with the progress of the Work on the Project site, available for inspection on site, and shall provide them in mylar and electronic format to the ENGINEER and the OWNER prior to Substantial completion.

6.13 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and shall be solely and completely responsible for conditions of the Site, including the safety of all persons and property at the Site, preparatory to and during performance of the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations, including such safety regulations as may be prescribed from time to time by the ENGINEER, the OWNER or local authorities having jurisdiction, relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection, and shall, when so directed by the ENGINEER or the OWNER, properly correct any unsafe conditions created by, or unsafe practices being committed on the part of its employees, Subcontractors, Suppliers or any individual or entity directly or indirectly employed by any of them. The CONTRACTOR shall fully comply with any and all applicable portions of the latest revision of the North Carolina Division of Highway 'Policies and Procedures for Accommodating Utilities on Highway Right of Way.' In the event of the CONTRACTOR's failure to comply with any of the safety precautions referenced herein or in the Contract Documents, the ENGINEER or OWNER may take the necessary measures to correct the conditions or practices complained of; and all costs thereof will be deducted from the Contract Price due the CONTRACTOR. Failure of the ENGINEER to direct the correction of unsafe conditions or practices shall not relieve the CONTRACTOR of its responsibility hereunder. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except and to the extent that such damage or loss is attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work and those people and that property that come into contact with the Work shall

continue, even during non-working hours, until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

C. In the event of any claims for damage or alleged damage to persons or property as a result of Work under this Contract, the CONTRACTOR shall be responsible for all costs in connection with the settlement of or defense against such claims. Before final payment to the CONTRACTOR is made under the Contract, the CONTRACTOR shall furnish satisfactory evidence that all claims for damage have been legally settled or that sufficient funds to cover such claims have been placed in escrow, or that an adequate bond to cover such claims has been obtained.

D. The Construction Documents and the joint and several phases of construction contemplated by the Construction Documents are to be governed at all times by applicable provisions of local and State laws, ordinances and regulations and Federal laws, including but not limited to the latest amendments of the Department of Labor, Bureau of Labor Standards, Safety and Health Regulations for Construction; and Williams and Steiger Occupational Safety and Health Act of 1970, including rules and regulations issued pursuant thereto (OSHA), applicable to the Work and performance of the Contract. Where applicable to the Work, in addition to the requirements of the General Conditions, the CONTRACTOR shall fully comply with any and all applicable portions of the Division of Highway 'Policies and Procedures for Accommodating Utilities on Highway Right of Way' or latest revision. The duty of the ENGINEER to conduct a construction review of the CONTRACTOR's performance is not intended to include a review of the adequacy of the CONTRACTOR's safety measures in, on, or near the Site.

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

B. CONTRACTOR shall notify the OWNER immediately, and in no event more than eight hours later, after an emergency has occurred if an emergency compromising the safety of persons or property at the Site has occurred.

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. CONTRACTOR shall provide on the Shop Drawings complete data with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials and equipment that CONTRACTOR agrees to provide, and the Shop Drawings shall be sufficient to enable ENGINEER to review the information for the purposes delineated in paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

4. All submittals required by the Contract Documents shall be submitted in three (3) copies plus the number to be returned to the CONTRACTOR. Samples and Operation and Maintenance Manuals required by the Contract Documents shall be submitted in three (3) copies, none of which will be returned.

5. All submittals shall be checked by CONTRACTOR for accuracy and conformance to

the Contract Documents before submittal to ENGINEER. Shop Drawings shall show the location of all structural members, walls, and slabs with relation to the Work on the layout drawings. Any potential interference with structural members, pipes, ducts, or other equipment or work must be brought to the ENGINEER's attention by the CONTRACTOR in writing.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct

specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage normally caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

C. By entering into the Contract with the OWNER, the CONTRACTOR represents and warrants:

1. That CONTRACTOR is experienced in and competent to perform the type of Work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by it.

2. That CONTRACTOR is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Contract.

3. That CONTRACTOR is familiar with all federal, state, county, municipal and department laws, ordinances, permits, regulations and resolutions which may be any way affect the Work or those employed therein, including but not limited to any special laws or regulations relating to the Work or any part thereof.

4. That such temporary and permanent Work required by the Contract Documents that is to be done by CONTRACTOR will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property.

5. That CONTRACTOR has carefully examined the Contract Documents and the Site of the Work and that from its own investigations, it has satisfied itself and made itself familiar with: (1) the nature and locations of the Work; (2) the character, quality and quantity of surface and subsurface materials likely to be encountered, including, but not limited to all structures and obstructions on or at the Project Site, whether natural or man-made; (3) the character of equipment and other facilities needed for performance of the Work; (4) the general and local conditions including, without limitation, the climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract

Documents; and (6) all other matters or things which could in any manner affect the performance of the Work.

6. That CONTRACTOR will fully comply with all requirements of the Contract Documents.

7. That CONTRACTOR will perform the Work consistently with good workmanship, sound business practice, and in the most expeditious manner, consistent with the best interests of the OWNER.

8. That CONTRACTOR will furnish efficient business administration and experienced superintendents and an adequate supply of workmen, equipment, tools and materials at all times.

9. That CONTRACTOR has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to ensure completion of the Project in accordance with the Contract Documents, allowing for normal and reasonable foreseeable weather, labor and other delays, interruptions and disruptions of the Work.

10. That CONTRACTOR will complete the Work within the Contract Time and all portions thereof within any Contract Deadlines.

11. That the Contract Price is based upon the labor, materials, systems and equipment required by the Contract Documents, without exception.

12. That CONTRACTOR will make a good faith effort to utilize minority business enterprises (MBEs) per N.C. General Statutes Section 143-128, *et seq.*, as Subcontractors for the Work.

13. That CONTRACTOR is not at the time of making of the Contract in dispute with the Town of Holly Springs in connection with any project for which it has performed Work.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, civil penalties, fine, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity. If through the negligence on the part of CONTRACTOR performing the Work, any other contractor or subcontractor shall suffer or claim to have suffered loss or damage, CONTRACTOR shall reasonably attempt to settle such claims with such other contractor or subcontractor by agreement or arbitration. If such other contractor or subcontractor shall assert any claim against OWNER on account of any damage alleged to have been sustained, OWNER shall notify CONTRACTOR, who shall indemnify and hold harmless OWNER against any such claims.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

D. Nothing in the Contract Documents shall create or give to third parties any claim or right of action against the CONTRACTOR, the OWNER or the ENGINEER beyond such claims or rights as legally exist irrespective of the Contract.

6.21 Contractor License Requirements.

A. CONTRACTOR shall be licensed in North Carolina in an amount equal to one and one-half (1-1/2) times the total Contract Price for all of the Work. CONTRACTOR shall have and maintain a valid Town of Holly Springs Privilege License to perform the Work. If the Work involves any roadway construction, CONTRACTOR shall have and maintain a current unlimited General Contractor's license with the 'Highway Contractor' classification.

ARTICLE 7 - OTHER WORK

7.01 Related Work at Site

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly

coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger others or any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of OWNER, such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If OWNER intends at the time of the making of the Agreement to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

7.03 Remedies

A. Should CONTRACTOR cause damage to the work or property of any separate contractor at the Site, or

should any claim arising out of CONTRACTOR's performance of the Work at the Site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER's Consultants, the Construction Coordinator or any other person, then CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

B. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, ENGINEER's Consultants and the Construction Coordinator harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals, and court and arbitration or mediation costs) arising directly or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER, ENGINEER, ENGINEER's Consultants or the Construction Coordinator to the extent based on a claim arising out of CONTRACTOR's performance of the Work. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of work by any separate contractor at the Site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, ENGINEER's Consultants or the Construction Coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter that seeks to impose liability on or to recover damages from OWNER, ENGINEER, ENGINEER's Consultants or the Construction Coordinator on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy with respect to OWNER, ENGINEER, ENGINEER's Consultants and Construction Coordinator for any delay, disruption, interference or hindrance caused by any separate contractor. This paragraph does not alter the liability of OWNER, ENGINEER, ENGINEER's Consultant and Construction Coordinator for activities that are their respective responsibilities.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, as amended by the Supplementary Conditions

and any Special Conditions, and unless OWNER is also acting as the ENGINEER or the inspector for the Project, OWNER shall issue all communications to CONTRACTOR through ENGINEER, or shall copy ENGINEER on its direct correspondence with CONTRACTOR.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

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

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period, unless and until the OWNER provides otherwise in writing to the CONTRACTOR, and all instructions of the ENGINEER as the OWNER's representative shall be executed promptly and efficiently by the CONTRACTOR and its Subcontractor.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check

the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

C. After hours or weekend Work shall include only such tasks that do not require observation by the ENGINEER unless the OWNER specifically authorizes otherwise in writing.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions and any Special Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If the CONTRACTOR decides that the Field Order should result in an increase of the Contractor Price or a change in the Contract Times, then the CONTRACTOR shall submit a written request regarding such an adjustment to the ENGINEER prior to commencing the Work. If the CONTRACTOR proceeds with the Work prior to the execution of the Change Order, such Work shall be performed with the understanding that the increase in the Contract Price or a change in the Contract Times requested is subject to the approval of the OWNER. The decision rendered by the OWNER concerning the request for an increase in the Contract Price or a change in the Contract Times resulting from a Field Order shall be final.

9.06 *Rejecting Defective Work*

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

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER’s authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER’s authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER’s authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER’s preliminary determinations

on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER’s written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER’s Authority and Responsibilities*

A. Unless otherwise specified in any separate agreement between the OWNER and the ENGINEER, neither ENGINEER’s authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Unless otherwise specified in any separate agreement between the OWNER and the ENGINEER,

ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. Unless otherwise specified in any separate agreement between the OWNER and the ENGINEER, ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. Unless otherwise specified in any separate agreement between the OWNER and the ENGINEER, ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The presence or absence of the ENGINEER at the site shall in no way modify the CONTRACTOR's responsibility for conformity with the Drawings and Specifications. Failure of the ENGINEER to reject materials or Work that does not conform with the Drawings and Specifications, whether from lack of discovery or for any other reason, shall in no way prevent later rejection of or corrections to the unsatisfactory materials or Work when discovered. The CONTRACTOR shall have no claim for losses suffered due to any necessary removals or repairs resulting from unsatisfactory Work.

F. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the

Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

C. If CONTRACTOR claims (1) that any work he/she has been ordered to do is not part of the Work required by the Contract Documents (hereinafter referred to as 'Extra Work') and that he/she has performed or is going to perform Extra Work, or (2) that any action or omission of OWNER or ENGINEER is contrary to the terms and provisions of the Contract Documents, CONTRACTOR shall:

(i) Verbally inform the ENGINEER or OWNER of its claim and then Promptly comply with such order;

(ii) File with ENGINEER, within fourteen (14) working days after being ordered to perform the work claimed by him/her to be Extra Work or within fourteen (14) working days after commencing performance of the Extra Work, whichever date shall be the earlier, or within fourteen (14) working days after the action or omission of the OWNER or the ENGINEER occurred or was due, a written notice stating the basis of his/her claim and a request for a determination thereof;

(iii) File with ENGINEER thirty (30) calendar days after said alleged Extra Work was required to be performed or said alleged Extra Work was commenced, whichever date shall be earlier, or said alleged action or omission by OWNER or ENGINEER occurred or was due, a verified detailed statement, with documentary evidence of the items and basis of his/her claim;

(iv) Produce for OWNER's examination, upon notice from OWNER, all his/her books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and canceled checks showing all of his/her actions and transactions in connection with or relating to or arising by reason or his/her claim, and submit

himself/herself and persons in his/her employment and in his/her Subcontractor's employment for examination under oath by any person designated by OWNER to investigate any claims made against OWNER under the Contract, such examination to be made at the offices of OWNER or OWNER's agent;

(v) Proceed diligently, pending and subsequent to determination of OWNER with respect to any such disputed matter, with the performance of the Contract and in accordance with all instructions of OWNER and ENGINEER.

D. CONTRACTOR's failure to comply with any or all of the provisions of Paragraph 10.01.C shall be deemed to be: (1) a conclusive and binding determination that said order, work action or omission is not additional or Extra Work for CONTRACTOR and is not contrary to the terms and provisions of the Agreement; and (2) a waiver by CONTRACTOR of all claims for additional compensation or damages or extension of Contract Times as a result of said order, work action or omission.

E. Only OWNER may waive or modify any of the provisions of Paragraph 10.01.C or 10.01.D, which waiver must be done in writing and signed by OWNER. In any action against OWNER to recover any sum in excess of the sum certified by the OWNER to be due under or by reason of the Contract, CONTRACTOR must allege in in his/her complaint and prove at trial compliance with the provisions of Paragraph 10.01.C. Nothing in paragraphs 10.01.C, 10.01.D, or this paragraph shall in any way affect OWNER's right to obtain an examination of CONTRACTOR before trial or discovery and inspection in any action that might be instituted by or against OWNER or CONTRACTOR.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

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

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a

result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16 or in the Supplementary Conditions; or

2. if no such dispute resolution procedures have been set forth in Article 16 or in the Supplementary Conditions, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date such decision is delivered to OWNER and CONTRACTOR, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of delivery of such decision, if the appealing party is the CONTRACTOR, and within 90 days after the date of delivery of such decision, if the appealing party is the OWNER, or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, in which case an appeal from the denial of the claim may be made in accordance with subparagraph 10.05.B.1 or 10.05.B.2.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

E. CONTRACTOR shall diligently continue all Work and adhere to the progress schedule to the extent possible during the resolution of any dispute, including a Claim, even if the dispute or Claim pertains to Contract Times, Contract Price, or any other integral feature of the

Agreement, unless the OWNER and the CONTRACTOR agree otherwise in writing.

10.06 *Requests for Changes in the Work*

A. At any time ENGINEER may request a quotation from CONTRACTOR for a proposed change in the Work. Within 21 calendar days after receipt of a request for a quotation for a proposed change, the CONTRACTOR shall proceed to submit a written and detailed proposal for an increase or decrease in the Contract Price or alterations of the Contract Times for the proposed change. ENGINEER shall have 21 calendar days after receipt of detailed proposal to respond in writing. The proposal shall include an itemized estimate of all cost and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in accordance with Articles 11 and 12, and in sufficient detail to reasonably permit an analysis by ENGINEER of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed, or impacted. Any amount claimed for subcontracts shall be similarly supported. Itemized schedule adjustments shall be in sufficient to permit an analysis of impact as required by the Contract Documents. Notwithstanding the request for quotation, CONTRACTOR shall carry on the Work and maintain the progress schedule.

10.07 *Effect of the Change Order*

A. The adjustment in the Contract Price and/or Contract Times stated in a Change Order shall comprise the total price and/or time adjustment due or owed the CONTRACTOR for the work or changes defined in the Change Order. By executing the Change Order, the CONTRACTOR acknowledges and agrees that the stipulated price and/or time adjustments include the costs and delays for all Work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect on all other non-affected Work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in contract price or time as a result of increases or decreases in costs and time of performance caused directly or indirectly from the change, subject to the current scope of the entire Work as set forth in the Contract Documents. Acceptance of this waiver constitutes an agreement between OWNER and CONTRACTOR that the Change Order represents an equitable adjustment to the Contract, and that CONTRACTOR will waive all rights to file a claim on this Change Order after it is properly executed.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. Rental rates shall include all fuel, lubricants, insurance and the like necessary in connection with the use of the equipment. Equipment rental charges shall not exceed the prorated rental rates listed in the current edition of the 'Compilation of Rental Rates for Construction Equipment' as published by the Associated Equipment Distributors. Hourly charges shall be determined by dividing the monthly rates by 176. The rental of any such equipment, ma-

chinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work, provided and to the extent that such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items, all of which must be in connection with and in furtherance of the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

6. Any costs due to the CONTRACTOR, or the Subcontractors or Suppliers, not properly performing or supplying the Work, including, without limitation, not adhering to the progress schedule.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C. The CONTRACTOR's fee shall not be applied to payroll taxes, social security contributions, or unemployment taxes.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs

11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

11.04 Costs Included in Contract Price

A. ENGINEER acknowledges that the Contract Price includes CONTRACTOR's costs of bonds, insurance, transportation of materials, labor and equipment, general administration, and the like. Gravel construction entrances to the Site also are included in the Contract Price.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee*: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee or a mutually acceptable percentage of Cost of Work; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent based on the Subcontractor's cost of Work;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in

CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

C. Pending any adjustment of the Contract Times pursuant to the terms of this paragraph 12.02, the CONTRACTOR shall diligently continue all Work and adhere to the progress schedule and the Contract Times to the extent possible.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Extensions granted to the Contract Times shall reflect the actual delay likely to be caused to the date of Substantial Completion. For example, a 3-day delay in the landscaping of the exterior due to abnormal weather conditions may or may not result in a full 3-day delay in the remainder of the Work such that Substantial Completion is also delayed a full three days. Only the resulting delay to Substantial Completion shall be credited to the Contract Times. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. 'Abnormal weather' is defined as weather that is more severe than the average weather for the particular time(s) and date(s) in question as compared to the last 5-year average. The 'average' shall be based on the 'Local Climatological Data' published by the National Oceanic and Atmospheric Administration for the Project area. It shall be the responsibility of the CONTRACTOR to furnish all data necessary to support its request. The

CONTRACTOR shall not be entitled to additional compensation as a result of time extensions not due to acts or neglect by the OWNER.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

13. The CONTRACTOR agrees to make no claim against OWNER, ENGINEER, their agents, representatives, or employees for damages or a change in the Contract Price for delay in the performance of this Contract occasioned by any act or omission to act of the OWNER or any of its representatives, and agrees that any such potential claim shall be fully satisfied by an extension of time to complete performance of the deemed Work as provided in Paragraph 12.03.

12.07 Float Times and Contract Times and Contract Price

A. Notwithstanding the agreement made by the parties that the CONTRACTOR controls and has responsibility for matters of scheduling, sequencing and arranging the Work, the parties hereby agree that the float time is a benefit to the OWNER in the progress schedule, and therefore, without obligation to extend either the overall completion date or any intermediate completion dates set out in the progress schedule, the OWNER may initiate changes to the Work that absorb float time only. OWNER-initiated changes that affect the critical path on a critical path methods schedule shall be the sole grounds for extending (or contracting) said completion dates. CONTRACTOR-initiated changes that encroach on the float time identified in the current progress schedule may be accomplished with the OWNER's concurrence. Such changes, however, shall give way to OWNER-initiated changes competing for the same float time.

B. Portions of the Work that are listed in the progress schedule with a float time may, at the option of the OWNER, be performed using any or no amount of float time, but in no event shall performance of the Work during the float times entitle the Contractor to an increase in the Contract Price as to such portions of the Work or as to other portions of the Work.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

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

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections,

tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval. Testing to be performed under the Contract Documents shall be performed in accordance with the North Carolina Department of Transportation 'Materials Specifications Guidelines' and the Town of Holly Springs 'Engineering Design and Construction Standards'. If and to the extent that the Town of Holly Springs testing standards conflict with and are more stringent than those of the North Carolina Department of Transportation, testing shall be performed in accordance with the Town of Holly Springs standards.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered and made available for inspection at the CONTRACTOR's expense.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same, and given ENGINEER time to inspect same, and ENGINEER has not acted with reasonable promptness in response to such notice.

G. The CONTRACTOR shall allow the ENGINEER sufficient time and opportunity for testing materials and equipment to be used in the Work. The CONTRACTOR shall advise the ENGINEER promptly upon placing orders for materials and equipment so that arrangements may be made, if desired by the ENGINEER, for inspection before shipment from the place of manufacture. The CONTRACTOR shall at all times furnish the ENGINEER and all OWNER representatives appropriate facilities for performing inspections and tests, including any labor necessary, and shall allow proper time for inspecting and testing materials, equipment, and workmanship. In setting Contract Times and a progress schedule for the Work, the CONTRACTOR should anticipate that delays may be caused in the execution of the Work due to the necessity of materials and equipment being inspected and accepted for use. The CONTRACTOR shall furnish, at its own expense, samples of all materials required by the ENGINEER for testing, and shall make its own arrangements for providing water, electric power, and/or fuel for various inspections and tests of structures and equipment.

H. The CONTRACTOR shall furnish the services of representatives of the manufacturers of certain equipment if so prescribed in the Specifications. The CONTRACTOR shall also place its orders for such equipment requiring that, after the equipment has been tested prior to final acceptance of the Work, the manufacturer shall furnish the OWNER with certified statements that the equipment has been installed properly and is ready to be placed in functional operation. Tests and analyses required of equipment shall be paid for by the CONTRACTOR, unless specified otherwise in the Contract Documents.

I. The OWNER reserves the right to independently perform, at its own expense, laboratory tests on random samples of material or performance tests on equipment delivered to the Site. These tests if made shall be conducted in accordance with the Specification requirements or other appropriate standards. The entire shipment represented by any given sample or piece of equipment may be rejected on the basis of the failure of a sample or piece of equipment to meet specified test requirements. All rejected materials and equipment shall be removed from the Site, whether stored or installed in the Work, and the required replacement shall be made, all at no

additional cost to the OWNER in accordance with the terms of Paragraphs 13.06 through 13.09.

J. Whenever nonconformance is discovered by the ENGINEER as a result of tests, inspections, or investigations, the CONTRACTOR shall bear responsibility for the full cost of such tests, whether otherwise required to pay for such tests, inspections or investigations under the Contract Documents, and shall directly pay for such services or shall reimburse the OWNER for such costs. Once nonconformance has been discovered, the cost of any additional tests and investigations that are ordered by the ENGINEER to ascertain subsequent conformance with the Contract Documents shall be borne by the CONTRACTOR, whether or not the original tests, inspections, or investigations of such nonconforming Work were originally required by the Contract Documents to be borne by another party.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will or is likely to conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

B. If OWNER stops Work under Paragraph 13.05.A, CONTRACTOR shall be entitled to no extension of Contract Times or increase in Contract Price.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective, even if such Work has previously been overlooked by ENGINEER and estimated as a basis for payment. At any time during the progress of the Work and up to the date of final acceptance, the ENGINEER shall have the right to reject any Work that does not conform to the requirements of the Contract Documents, even if such Work has been previously inspected and paid for. Any omissions or failure on the part of the ENGINEER to disapprove or reject any Work or materials at the time of inspection shall not be construed as an acceptance of any defective Work or materials. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others or other portions of the Work affected by such correction, removal, or replacement).

B. The ENGINEER may order tests of imperfect or damaged Work, equipment, or materials to determine the required functional capability for possible acceptance, if there is no other reason for rejection. The cost of such tests shall be borne by the CONTRACTOR; and the nature, tester, extent of supervision of the tests shall be as determined by the ENGINEER. If the results of the tests indicate that the required functional capacity of the Work, equipment, or material was not impaired, then the Work, equipment, or materials by deemed acceptable by the OWNER. If the results of such tests reveal that the

required functional capability of the questionable Work, equipment or materials have been impaired, then such Work, equipment or materials shall be deemed imperfect Work, equipment or materials immediately upon their identification as such in lieu of performing the tests for functional capability.

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR immediately upon the submissions of an invoice for such expenses to the CONTRACTOR by the ENGINEER or the OWNER.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed, or, if such correction or removal

and replacement took longer than one year, then for such period of time as the correction or removal and replacement took. All warranties for the Work so affected shall be extended for the same amount of time.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 OWNER May Correct Defective Work

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and

suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, including a proportionate decrease in the amount of the CONTRACTOR's fee. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. Once a month after the Work has commenced, CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. The due date for submitting an Application for Payment shall be the 25th day of the month for which the application is being made. Request for payment shall be submitted on the standard forms included in the Contract Documents unless approved otherwise by the ENGINEER. All submittals shall include five (5) copies of Application for Payment forms, all bearing original signatures. The Certificate of Sales Tax Paid, shall be notarized and bearing original signatures and shall be submitted as described under Section 6.10. If payment is requested on the basis of materials and equipment not incorporated into the Work but delivered and suitable stored at the Site or at another location agreed to in writing by the OWNER, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER, which shall establish the OWNER's title to materials and equipment, clear of liens, and protection of the OWNER's interest in the materials and equipment, including the maintenance of insurance on materials stored off the Site.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR and all Subcontractors who have performed Work, or are otherwise receiving payment under the Application for Payment, stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

4. Beginning with the second Application for Payment, each Application shall include evidence that payment received on the basis of materials and equipment not incorporated and suitably stored, has in fact been paid to the respective Supplier(s) within sixty days of payment by OWNER. Failure to provide such evidence of

payment may result in the withdrawal of previous approval(s) and removal of the cost of related materials and equipment from the next submitted Application for Payment.

5. Each Application for Payment shall include the current list of Subcontractors and Suppliers providing labor and materials to the Site. Failure to provide an accurate list, or the existence of Subcontractors or materials at the Site that have not been approved by the OWNER and ENGINEER, may result in the withdrawal of previous approval(s) and/or removal of the cost of labor and/or materials provided by unapproved Subcontractors and/or Suppliers from the current and future Applications for Payment.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation);

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it

is ENGINEER's responsibility to observe the Work; and

d. any fines owned by CONTRACTOR (to third parties or the OWNER), setoffs, or other reductions in the amount due to CONTRACTOR have been subtracted from the current or previous Application for Payment.

3. Except as specified in any separate agreement between the OWNER and the ENGINEER, and only to the extent of that agreement, the ENGINEER through his recommendation will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Except as specified in any separate agreement between the OWNER and the ENGINEER, and only to the extent of that agreement, neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of

subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09;

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A;

e. ENGINEER has knowledge of any setoff, fine, or other reduction in the amount due to CONTRACTOR in connection with the Application for Payment and such amount has not been properly accounted for in the Application for Payment;

f. The Application for Payment is un any way incomplete; or

g. Unapproved Subcontractors or Suppliers are performing Work at supplying materials to the Site.

C. *Payment Becomes Due*

1. Thirty days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

2. Should CONTRACTOR neglect to pay any undisputed claims made in writing to OWNER within thirty days after completion of the Work or any portion thereof, and continuing unsatisfied for a period of ninety days, OWNER may pay such claims and deduct the amount thereof from the balance due CONTRACTOR. OWNER may also, with the written consent of the CONTRACTOR, use any monies retained, due, or to become due under this Contract for the purpose of paying for both labor and materials for such Work, even if claims have not been filed.

3. Payment under the Payment Bond and the withholding of retainage by the OWNER for claims shall not be mutually exclusive protections for OWNER. OWNER may exercise both.

4. Any and all liens for work and materials may be paid off by OWNER within a reasonable time after filing for record of a notice of such liens in accordance with State and local laws, except where the claim on which the lien is filed is being actively litigated by CONTRACTOR; in such case OWNER may pay the amount of any final judgment or decree or any such claim within a reasonable time after such final judgment or decree shall be rendered.

5. All monies paid by OWNER in settlement of liens as aforesaid, with all costs and expenses incurred by OWNER in connection therewith, shall be charged to CONTRACTOR, shall bear interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank, and shall be deducted from the next payment(s) due CONTRACTOR under the terms of this Contract or shall be reimbursed by CONTRACTOR immediately upon receipt by the CONTRACTOR of an invoice therefor by the OWNER if insufficient payments are outstanding to the CONTRACTOR to cover such cost and expenses.

6. As this agreement is a public construction contract, final payment shall be governed by North Carolina General Statute § 143-134.1 and the applicable interest rate shall be four percent per annum.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended;

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A; or

e. Insufficient funds have been deducted from the Application for Payment to cover all fines owned by CONTRACTOR (to third parties or the OWNER) and other setoffs and reductions in amount due to the CONTRACTOR in connection with the Application for Payment.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 CONTRACTOR's Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

B. No materials or supplies for the Work shall be purchased by CONTRACTOR or any Subcontractor subject to any chattel mortgage, fixture filing, or under a conditional sale contract or other agreement by which an interest is retained by the seller. CONTRACTOR warrants that CONTRACTOR has good title to all materials and supplies used by CONTRACTOR in the Work, free from all liens, claims or encumbrances.

C. CONTRACTOR shall indemnify and save OWNER harmless from all claims growing out of the lawful demands of Subcontractors, Suppliers, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. CONTRACTOR shall at OWNER's request, furnish

satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If CONTRACTOR fails to do so, then OWNER may, after having provided ten (10) days' written notice on CONTRACTOR, withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims. OWNER may hold such withheld money until satisfactory evidence is furnished that all liabilities have been discharged, or use the money to pay the unpaid obligations. Once the obligations have been satisfied, payment to CONTRACTOR shall be resumed in accordance with the terms of this Contract. In no event shall the provisions of this paragraph be construed to impose any obligations upon OWNER to either CONTRACTOR or CONTRACTOR's Surety. In paying any unpaid bills of the CONTRACTOR, OWNER shall be deemed the agent of CONTRACTOR, and any payment so made by OWNER shall be deducted from the Contract Price due to CONTRACTOR. OWNER shall not be liable to CONTRACTOR for any such payment made in good faith.

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER or OWNER do not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes

justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list unless the OWNER has stopped or suspended the Work or terminated the Contract pursuant to the terms hereof.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If

ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

3. Payment in full for portions of the Project that are completed and used by OWNER shall not be made until the entire Project has been completed. Partial payments and retainage shall continue to be handled as described elsewhere in the Contract Documents. Under no circumstances shall occupancy and use of completed portions of the Project by OWNER be considered grounds for either reducing the retainage withheld from CONTRACTOR's partial payment or increasing the Contract Price.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing that are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. If the OWNER suspends the Work without cause, then CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate the Contract or Suspend the Work for Cause*

A. The occurrence of any one or more of the following events will justify suspension of the Work and/or termination of the Contract (which termination may or may not be preceded by a suspension of the Work), for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

5. CONTRACTOR's abandonment of the Work, or sublet or assignment of its rights and/or responsibilities under this Contract, or any part thereof, without the previous written consent of OWNER, or the CONTRACTOR's assignment of any right, obligation or claim under the Contract without the previous written consent of the OWNER or otherwise than as herein specifically permitted;

6. Delays within the control of the CONTRACTOR, pursuant to Paragraph 12.04.A, have caused or will shortly cause the Work to interfere with the intended use of the Site, or a portion thereof, for other purposes, which interference would not have occurred if Contract Times had been met;

7. Any material misstatement by CONTRACTOR in any of the public bidding documents or failure of the CONTRACTOR to comply with any public bidding law.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed, and may pay more than the prevailing rate if necessary to have the Work completed in accordance, or as close thereto as feasible, with the original progress schedule and Contract Times.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

D. If the OWNER suspends Work due to repeated unsafe Work conducted by the CONTRACTOR, confirmed by subsequent inspection by OSHA NC, then the CONTRACTOR shall not be allowed any adjustment in the Contract Price or extension of Contract Times for delays caused by such suspension, and CONTRACTOR shall bear all responsibilities under this Contract for such delays.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such completed and acceptable Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. Upon receiving the OWNER's notification of termination of the Contract, the CONTRACTOR shall immediately and expeditiously terminate any ongoing Work and inform its Subcontractors and Suppliers of termination, all so as to minimize the costs, expenses and other damage sustained prior to the effective date of the termination.

15.04 CONTRACTOR May Stop Work or Terminate

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute. CONTRACTOR shall continue to diligently pursue completion of the Work and maintain the progress schedule during any dispute resolution process, unless otherwise agreed by CONTRACTOR and OWNER in writing. The Town of Holly Springs shall follow the rules of the State Construction Office entitled "Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects, Adopted February 26, 2002" as found at:
http://www.nc-sco.com/Guidelines/SBC/sbc_Dis_rules.pdf

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligation*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Amendments*

A. This Contract may only be amended in writing by an instrument executed by the party or parties

granting additional rights against it to others or upon whom additional obligations are being imposed.

17.07 *Assignment*

A. CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the Contract, or of its legal right, title, or interest in or to the same or obligations or warranties made thereunder, in whole or in part, without the prior written consent of the OWNER. CONTRACTOR shall not assign by power of attorney or otherwise any monies due it and payable under this Contract without the prior written consent of the OWNER. Such consent, if given, shall in no way relieve the CONTRACTOR from any of the obligations of this Contract. OWNER shall not be bound to abide by or observe the requirements of any such assignment.

17.08 *Addresses*

A. Both the address given in the Bid Form upon which this Agreement is founded, and CONTRACTOR's office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to CONTRACTOR shall be certified, mailed, or delivered. The delivering at either of the above named places, or depositing in a postpaid wrapper directed to the address in the Bid Form, in any post office box regularly maintained by the post office department, or any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon CONTRACTOR; and the date of said service shall be the date of such delivery or mailing. The CONTRACTOR's notice address may be changed at any time by instrument in writing, executed and acknowledged by CONTRACTOR, and delivered to OWNER and ENGINEER. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon CONTRACTOR personally.

17.09 *Forms*

A. The form of all submittals, notices, change orders, and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by ENGINEER. Standard forms, which ENGINEER expects to use, are contained in the pages of the Special Conditions following these General Conditions.

17.10 *Dissemination of Information*

A. It is expressly agreed and understood that the CONTRACTOR shall not at any time publicly disseminate any information concerning the Project without prior approval from the OWNER. Such approval will not be unreasonably withheld but may be given with certain

stipulations, such as OWNER participation in the creation of the public product or OWNER review and the option to refuse ultimate release of the final product should it fail to meet the OWNER's standards and goals. Public dissemination includes but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, professional papers or presentations, news releases, articles, or other media products, and/or CONTRACTOR's business collateral pieces.

17.11 *Other*

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been produced by negotiation of the parties, each of whom had an opportunity to consult with an attorney, and the rule of construction against the interest of the drafter shall not apply.

END OF SECTION