

**THIS MASTER CONSTRUCTION AGREEMENT** (the "Agreement") is entered into, effective as of the \_\_\_\_\_ of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by and between \_\_\_\_\_, (hereinafter referred to as "Owner"), and \_\_\_\_\_ (hereinafter referred to as "Contractor").

In consideration of the agreements herein contained, the parties hereto contract and agree as follows:

## INTRODUCTION

The terms and conditions of this Master Construction Agreement shall apply to all Work for which Owner issues a Order (as defined below) to Contractor, when such Order is issued pursuant to this Master Construction Agreement. Each Contract for Work shall be entered into hereunder by Owner's issuance to Contractor of the Order. Owner hereby notifies Contractor of Owner's objection to any additional and/or different terms set forth in any writing from Contractor, unless and to the extent Owner has expressly agreed to any such additional and/or different terms in the applicable Order. Each Order issued hereunder shall be a separate and individual Contract under this Master Construction Agreement, and the terms and conditions of this Master Construction Agreement shall apply to each such Order.

## ARTICLE I.

### GENERAL PROVISIONS

#### 1.1 DEFINITIONS

For all purposes of the Contract Documents, except as it is otherwise expressly provided, or unless the context otherwise requires, the terms defined shall have the meanings assigned to them in this Article.

"Affiliated Persons" means Contractor's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests.

"Applicable Laws" means the U.S. Foreign Corrupt Practices Act and German anti-corruption laws, without regard to their jurisdictional limitations, U.S. and German export control laws to the extent applicable the goods and or information which are subject of this Agreement, and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by Contractor or any of its Affiliated Persons in connection with this Agreement, in each case as the same may be amended from time to time.

"Architect/Engineer" means any person or entity (other than a Contractor, Subcontractor or Sub-subcontractor) retained on behalf of Owner to perform any design and/or engineering services with respect to the Project.

"Claim" means a demand, assertion or other dispute by Owner or Contractor or Subcontractor or Sub-subcontractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, repayment of money, extension of time or any other relief with respect to the terms of the Contract.

"Construction Manager" means the entity who has entered into a construction management agreement with Owner to provide construction management services for the Project.

"Contract" means the entire agreement between the parties represented by the Contract Documents, which may be modified, amended, supplemented or restated from time to time.

"Contract Documents" means this Agreement, the applicable Order, Specifications and Drawings, and Special Conditions of the Contract (if any).

"Contract Price" means Contractor's full compensation in the amount set forth on the applicable Order for full and complete performance by Contractor of all the Work and compliance with all the terms and conditions of the Contract.

"Contractor" means the entity contracting to perform the Work set forth in the Contract with Owner.

"Correction Period" means the period of time extending until **one (1) year** after Final Acceptance whereby Contractor agrees to correct Defective Work guaranteed pursuant to the Contract.

"Defective Work" means Work which (a) does not conform to the requirements of the Contract Documents including, without limitation a failure to meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents or any guarantee stated in the Contract Documents; or (b) is of inferior workmanship or materials.

"Drawings" are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, and as may be amended from time to time.

"EDI" means the electronic data interchange system described in **Article 16.9, ELECTRONIC DATA INTERCHANGE SYSTEM AND EDOCS SYSTEM**, hereof.

"Effective Date" means the date set forth above on which the Agreement 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.

"Environmental Requirements" means all applicable present and future federal, state and local laws, statutes, regulations, rules, ordinances, codes, orders, licenses, permits, approvals, plans, authorizations, concessions, or the like, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders, relating to the protection of human health or the environment, including without limitation: (i) all requirements pertaining to reporting, licensing, authorizing, approving, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of any Hazardous Materials or waste into the indoor or outdoor air, surface water, sanitary water, groundwater, or land, or otherwise into the environment, or relating to the manufacture, operation, processing, distribution, use, treatment, storage, disposal, transport, handling or management of any Hazardous Material or waste; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public and/or the environment.

"Final Acceptance" means acceptance of Contractor's Notice of Completion by Owner as described in the provisions of **Article 8.6, NOTICE OF COMPLETION AND FINAL ACCEPTANCE**, hereof.

"Final Completion" shall have occurred when to Owner's satisfaction "Final Acceptance," or its equivalent, has been achieved, such that the Project is completed in accordance with the design as reflected by the Contract Documents and is ready for startup and initial operation.

"Government Entity" means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organization.

"Government Official" means any officeholder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office.

"Hazardous Material" means any substance or material: (i) the presence of which requires investigation or remediation under any federal, state or local law, statute, rule, regulation, ordinance, order, action, policy

or common law; (ii) which is or becomes regulated by any federal, state or local governmental authority, including without limitation, any substance or waste material which is defined or listed as a "hazardous waste," "acutely hazardous waste," "extremely hazardous substance," "restricted hazardous waste," "industrial waste," "hazardous substance," "hazardous material," "pollutant" "hazardous air pollutant," "criteria pollutant," "volatile organic compound," "priority pollutant," "special waste," "SARA 313 chemical" or "contaminant" under any law, including without limitation, the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601 et seq., the federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., the federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., the federal Clean Air Act, 42 U.S.C. §§7401 et seq., the Toxic Substances Control Act, 7 U.S.C. §§136 et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., the Occupation Safety and Health Act of 1970, 29 U.S.C. §§651 et seq., and similar Alabama and South Carolina state and local laws, including without limitation, the Alabama Hazardous Wastes Management and Minimization Act, 22 Ala. Code §§30-1 et seq., the Alabama Water Pollution Control Act, 22 Ala. Code §§22-1, et seq.; and the Alabama Air Pollution Control Act, 22 Ala. Code §§28-1, et seq., the South Carolina Hazardous Waste Management Act, S.C. Code §§44-56-10 et seq., the South Carolina Pollution Control Act, S.C. Code §§48-1-10 et seq., or any other federal or Alabama or South Carolina state or local law regulating or otherwise affecting the handling, use, control, management, treatment, storage or disposal or hazardous, explosive, corrosive, flammable, infectious, radioactive or toxic materials or wastes; (iii) which contains gasoline, diesel fuel or other petroleum hydrocarbons or a petroleum derivative; (iv) which contains polychlorinated biphenyls ("PCBs"), asbestos, radioactive materials or urea formaldehyde; or (v) which poses an unreasonable risk of injury to human health or the environment.

"Jobsite" means that portion of the Site on which Contractor will perform the Work under the Contract as designated by Owner in the applicable Order.

"MBUSI" means Mercedes-Benz U.S. International, Inc., an Alabama corporation, having its principal place of business at 1 Mercedes Drive, Vance, Alabama, 35490, Attn: General Counsel.

"MBV" means Mercedes-Benz Van, LLC, a Delaware limited liability company, having its principal place of business at 8501 Palmetto Commerce Parkway, Ladson, South Carolina, 29456, Attn: General Counsel.

"Minority-Owned Business Enterprise" or "MBE" means a minority-owned Subcontractor, Sub-subcontractor or Supplier certified by a certifying agency that is approved by Owner. The National Minority Supplier Development Council (NMSDC) and its regional affiliate councils are Owner approved certifying agencies. All other agencies must be approved by Owner.

"Notice of Acceptance" means the notice provided by Owner described in **Article 8.6, NOTICE OF COMPLETION AND FINAL ACCEPTANCE.**

"Notice of Completion" means the notice provided by Contractor described in **Article 8.6, NOTICE OF COMPLETION AND FINAL ACCEPTANCE.**

"Order" means a Work Order issued by Owner to Contractor from time to time when such Work Order is issued pursuant to this Agreement.

"Owner" means the legal entity which issues an Order to Contractor pursuant to this Agreement.

"Owner's Representative" means any person or entity designated by Owner to act for Owner in a representative capacity for a specific task, duty or responsibility which person or entity could include the Architect/Engineer, Construction Manager, if any, or other person or entity engaged by Owner.

"Project" means the Owner's manufacturing plant and all related production and auxiliary equipment and other infrastructures and buildings from time to time located on or adjacent to the Site and owned and

operated by Owner, its subsidiaries or affiliates, of which the Work performed under the Contract Documents is a part.

"Retainage" means, unless otherwise set forth in the applicable Order, ten percent (10%) of the payments due Contractor by Owner which is to be withheld by Owner pursuant to the payment terms set forth herein.

"Schedule" means the schedule for the completion of the Work as set forth in the applicable Order, as such may be revised or updated, always subject to Owner's approval.

"Scope of Work" shall mean the Work required by the Contract Documents, which Work is generally set forth in **Exhibit A** to this Agreement and further described in the applicable Order.

"Site" means the physical location of the Project.

"Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services, and any amendments thereto.

"Subcontractor" means any properly qualified individual, firm, association, or corporation undertaking the performance of any part of the Work under the terms of the Contract Documents by virtue of an agreement between itself and Contractor with the written approval of Owner.

"Sub-subcontractor" means any properly qualified individual, firm, association, or corporation undertaking the performance of any part of the Work by virtue of an agreement between itself and a Subcontractor or a subtler contractor of Subcontractor, and shall also include Suppliers.

"Supplier" means a supplier of goods, materials, equipment or services for any part of the Work, and is included in the definition of "Subcontractor" above.

"Women-Owned Business Enterprise" or "WBE" means a women-owned Subcontractor, Sub-subcontractor or Supplier certified by a certifying agency that is approved by Owner. The National Minority Supplier Development Council (NMSDC) and its regional affiliate councils are Owner approved certifying agencies. All other agencies must be approved by Owner.

"Work" means the design, construction, installation, and/or services required by the Contract Documents, whether it is fully completed or partially completed, and includes all labor, materials, equipment and services to be provided by Contractor to fulfill Contractor's obligations under the Contract Documents.

Terms defined in this paragraph importing the singular also include the plural, and vice versa, where the context requires.

## 1.2 **CONTRACT DOCUMENTS**

The Contract consists of the following documents (the "Contract Documents"), including all additions, deletions, and modifications incorporated therein before the execution of the Contract.

- (1) This Master Construction Agreement
- (2) The applicable Order
- (3) Exhibits and attachments to the Agreement and applicable Order
- (4) Specifications and Drawings

(5) Special Conditions of the Contract (If Any)

The intent of the Contract Documents is to include all labor, materials, water, fuel, tools, plants, utility, and transportation services, and all other incidental services and expenses necessary or required for proper execution and completion of the Work. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect/Engineer and Contractor; (2) between Owner and a Subcontractor or Sub-subcontractor; or (3) between any persons or entities other than Owner and Contractor.

### 1.3 PRECEDENCE

A. In cases of express conflict between parts of the Contract Documents, including all Specifications, Drawings, and attachments, or exhibits, the order of precedence shall be as follows:

- (1) Special Conditions of the Contract (If Any)
- (2) This Master Construction Agreement
- (3) The applicable Order
- (4) Specifications
- (5) Drawings
- (6) All other Exhibits and attachments to the Agreement and applicable Order
- (7) Master Purchasing Agreement

B. In the event of an express conflict between the documents listed in **Article 1.3-A** above, or between any other documents which are a part of the Contract, Contractor shall notify Owner immediately and shall comply with Owner's resolution of the conflict.

C. Anything shown in the Specifications referred to in the Contract or thereafter furnished by Owner or Owner's Representative and not shown in the Drawings referred to in the Contract, or shown in such Drawings and not shown in such Specifications, shall be of like effect as if shown or mentioned in both and shall not be considered to be a conflict.

### 1.4 TERM

The term of the Contract shall be for a period of three (3) years commencing on the Effective Date, unless sooner terminated in accordance with **Article 10.1, Termination at Owner's Option**. Thereafter, the Contract shall automatically renew for successive one (1) year periods, unless either party provides the other with notice of non-renewal at least ninety (90) days prior to the end of the term or any renewal term.

### 1.5 LIQUIDATED DAMAGES

Contractor and Owner recognize that time is of the essence of this Contract and that Owner will suffer financial loss if the Work and/or part thereof is not completed by the date of Final Completion set forth in the Contract Documents, plus any extensions thereof allowed in accordance with Section 9.3 of this Agreement. The parties also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner if the Work and/or part thereof is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner the liquidated damages amount stated in the applicable Order for each calendar week that expires after the Final Completion date specified in the Contract Documents, plus any extensions thereof allowed in accordance with Article 9.3 of this Agreement, until such Final Completion is achieved. Liquidated damages are intended to compensate Owner for delay during the periods which the liquidated damages are applicable; provided, however, nothing in this paragraph shall limit Owner's rights to specific performance herein (including but not limited the right to demand that Contractor accelerate its schedule), or the right to terminate this Contract in the event of a delay or limit Owner's damages arising from such termination, including but not limited to, cost of completion of the Work after termination. Furthermore, Contractor's obligation to pay liquidated damages shall be in addition to

Contractor's obligation under Article 13.2 to indemnify and save harmless Owner against any damages or costs arising from claims of other contractors.

## **ARTICLE II.**

### **SUMMARY OF WORK**

#### **2.1 SCOPE OF WORK**

The Work contemplated by the Contract includes all terms, conditions, requirements, and obligations provided for in the Contract Documents.

Refer to the applicable Order and the Specifications, Drawings, and the Scope of Work set forth in **Exhibit A** and the applicable Order, for a detailed description of the Work.

#### **2.2 WORK SUPPLIED BY CONTRACTOR**

Except as otherwise expressly provided herein, Contractor shall supply all labor, supervision, tools, equipment, installed and consumable materials, services, testing devices and warehousing and each and every item of expense necessary for the proper design, engineering, supply, fabrication, field erection, application, handling, hauling, unloading and receiving, installation, construction, assembly, testing, evaluation, and quality assurance of the Work.

#### **2.3 MATERIAL, EQUIPMENT, PERMITS OR SERVICES FURNISHED BY OWNER**

Owner shall furnish or cause to be furnished to Contractor, without cost to Contractor, the items listed on or referenced in **Exhibit B**, unless provided otherwise in the applicable Order, for or in connection with performance of the Work.

#### **2.4 TEMPORARY FACILITIES AND UTILITIES**

Set forth on **Exhibit C** hereof is a description of the temporary facilities and utilities to be provided by Owner and Contractor.

#### **2.5 DATA REQUIREMENTS**

Set forth on **Exhibit D** hereof is a description of the data requirements to be provided by Contractor.

#### **2.6 CUTTING AND PATCHING**

Contractor shall comply with the following requirements with respect to cutting and patching:

- A. Contractor shall do all necessary cutting, fitting, and patching of the Work that may be required to properly receive the Work to make its several parts join together properly, receive and provide for the work of various trades, and be received by the work of other contractors and subcontractors, or as required by the Drawings and Specifications to complete the Work. After such cutting, Contractor shall replace or restore or repair and make good all defective or patched work as required by Owner or Owner's Representative.
- B. Contractor shall not cut, excavate, or otherwise alter any of the Work in a manner or by a method or methods that will endanger the Work, adjacent property, workmen, the public, or the work of any other contractor or subcontractor.

- C. Contractor shall have his Subcontractors and Sub-subcontractors check the location of all sleeves, openings, slots, etc., for the piping, ducts, breeching, conduits, louvers, grilles, fans, etc., as they are laid out on the job.
- D. Provision for openings, holes, and clearances through walls, beams, floors, ceilings, and partitions shall be made and checked by Contractor, its Subcontractor and/or its Sub-subcontractor in advance of constructing such parts of the Work, and unnecessary, superfluous or dangerous cutting shall be avoided.
- E. Pipes passing through concrete or masonry walls shall be protected by pipe sleeves two sizes larger than the pipe, plus its insulation, to provide free movement.
- F. Under no condition shall structural, framing, or other parts or members subjected to computed stress be cut or disturbed without the prior approval of Owner or Owner's Representative. Any plates, studs, or joists, and/or rafters that are approved to be cut to execute necessary work shall thereafter be securely strapped and braced to restore their original strength by an approved method.
- G. Owner's approval or Owner's Representative's approval shall be obtained before cutting or drilling holes in concrete or masonry that tend to damage or weaken the load capacity.

## **2.7 EXISTING SERVICES AND UTILITIES ON SITE**

With respect to existing services and utilities on Site, Contractor shall:

- A. Establish the location and extent of service and utility lines in the area of the Work and notify Owner or Owner's Representative of findings before commencing the Work and take all precautions to ensure that there are no unknown services and/or utilities. Contractor shall have no right to make any claims for delay or additional compensation under the Contract due to discovery and consequences of any unknown services and/or utilities during the course of construction.
- B. Where unknown services and/or utilities are encountered, immediately advise Owner or Owner's Representative and confirm findings in writing within forty-eight (48) hours.
- C. Where the Work involves breaking into or connecting to existing services and/or utilities, carry out the Work at times directed by Owner or Owner's Representative.
- D. Record locations, including elevations, of maintained, rerouted and abandoned service and/or utility lines.
- E. Contractor acknowledges that Owner intends to operate its currently existing automobile manufacturing production facility on the Site during the performance of the Work. Contractor shall not, by its own acts or omissions, or the acts or omissions of its Subcontractors and/or Sub-Subcontractors, cause a partial or complete shutdown or other interference of any kind in the operation of Owner's currently existing automobile production facility without giving notice seventy-two (72) hours in advance to Owner and Owner's Representative and obtaining the written consent of Owner and Owner's Representative.

## **2.8 NO GUARANTEED QUANTITIES**

Any estimated quantities, bills of materials, lists, weights or quantities of materials or structures which have been or may be furnished to Contractor have been or will be prepared with reasonable care, but their accuracy is not guaranteed. They may or may not be accurate in any or all particulars, and they shall not

be considered as finally correct, sufficiently complete or accurately covering any portion or all of the Work to be done under the Contract.

## 2.9 SUBMITTALS

Contractor shall submit the submittals required by the Contract Documents per the timeframes stated in the Contract Documents. Owner's or Owner's Representative's review of any such submittals shall not be for the purpose of fulfilling the Contractor's responsibilities, such as determining the accuracy and completeness of details, substantiating instructions or determining whether the Work conforms to the Contract Documents. Owner's or Owner's Representative's review and approval shall not include means, methods, techniques, sequences or procedures of construction unless it is specifically called for in the Contract Documents. The review and approval of a separate item shall not be assumed to be approval of the entire assembly involving that item. Contractor assumes the risk of any construction it performs prior to Owner's or Owner's Representative's review and approval of any required submittal

## ARTICLE III.

### DRAWINGS AND SPECIFICATIONS

#### 3.1 INTENT OF SPECIFICATIONS AND DRAWINGS

- A. Intent of Specifications and Drawings. The Specifications and Drawings are intended to describe the Work and to furnish sufficient information to indicate what is necessary for the construction of the Work, complete in all details. The intent of the Specifications is to outline or indicate items of the Work that cannot readily be shown on the Drawings and to indicate types and qualities of materials and workmanship.
- B. Contractor's Duty to Pay Expenses. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all permits, taxes, insurance, materials, labor, tools, equipment, water, light, heat, power, transportation, supervision, temporary construction and all services and facilities of every nature and whatsoever necessary for the performance of the Contract, complete and within the agreed time.
- C. Work Required. The Specifications and Drawings are intended to be complementary, and what is called for by either shall be as binding upon Contractor as if called for by both. The Work shall be complete in every detail. However, should any of the Work or any material be required which Work or material is not set forth in the Specifications or on the Drawings, either directly or indirectly, but which is nevertheless necessary for the proper carrying out of the intent thereof, including variations as may be necessary to conform to the conditions of actual construction, Contractor agrees the same to be implied and required and shall perform all Work and furnish all such material as fully as if said Work and/or material were particularly delineated or described without additional costs to Owner. Contractor shall not be relieved of any obligations or responsibilities with respect to the Work except by written consent of Owner.
- D. Errors, Omissions or Inconsistencies. Contractor shall not take advantage of any manifestly unintentional error, omission, or inconsistency, should such exist. Should any error, omission, or inconsistency appear in the Specifications or in the Drawings, Contractor, before proceeding with the Work, shall call Owner's or Owner's Representative's attention to same for proper determination, and in no case shall Contractor proceed with the Work until such determination is received from Owner or Owner's Representative.
- E. Large-Scale or Full Size Details. Large-scale or full-size details, when furnished by Owner's Representative or Owner to Contractor after award of the Contract, will be developed from the scale Drawings. Should such details differ from the intent of the scale Drawings or not be



reasonably inferable therefrom and such difference(s) result in additional expense to Contractor, Contractor shall, immediately upon receipt of such details, call Owner's or Owner's Representative's attention to same, in writing, for proper determination. No adjustment in the Contract Price with respect thereof will be made unless Contractor receives a written order with respect thereto from Owner or Owner's Representative before starting the Work covered by said detail.

- F. Portion of Drawings. With respect to any parts of the Work for which only a portion is completely drawn or detailed or which are indicated on the Drawings for any particular area or location, all like Work shall conform to the portions so drawn or detailed and shall be deemed to continue throughout like areas or locations and shall include only such variations therefrom approved by Owner's Representative or Owner as required to conform to the conditions of the actual construction, unless distinctly shown or noted otherwise.
- G. Section, Headings and Subdivisions of Work. While the Work described in the Specifications may be divided into sections, headings, and subheadings, Contractor shall furnish all labor and materials necessary to provide a complete piece of Work as contemplated by the Specifications and Drawings. Any item called for under any one Specification subdivision must be supplied even though it is not called for again under the subdivision for the particular Work. Regardless of such subdivision by sections, headings, and subheadings as they appear in the Specifications, Contractor shall be responsible for the classification and allocation of the performance of the Work and of the furnishing of all labor and material in connection therewith to avoid any delays which may otherwise result from conflicts with local customs, rules, jurisdictional awards, regulations, decisions and the like, insofar as same may be applicable to the Work.
- H. Explanations. Any doubt as to the meaning of the Specifications or Drawings, or any obscurity as to the wording of them, will be explained by Owner or Owner's Representative. All directions and explanations requisite or necessary to complete, explain or make definite any of the provisions of the Specifications and Drawings and give them due effect, will be given by Owner or Owner's Representative in writing.
- I. Additional Instructions. Further information and instructions may be issued by Owner or Owner's Representative or prepared by Owner or Owner's Representative and transmitted to Contractor by Owner or Owner's Representative, during the progress of the Work by means of additional detail drawings or otherwise as deemed necessary to make more clear or specific the Drawings and Specifications in the Contract Documents, when and as required by the Work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

### 3.2 APPROVED AND HOLD DRAWINGS

- A. Approved Drawings. The Work shall be performed using only Drawings and Specifications issued in the Contract Documents. Such issuance shall not relieve Contractor of any obligations under the Contract, nor constitute Owner's assumption or responsibility for the accuracy or adequacy of any of Contractor's information or the Work incorporated in such documents.
- B. "Hold" Drawings. Contractor shall perform all the Work outside of the areas marked "HOLD" on the Specifications and Drawings to maintain the schedule of the Work, but shall not perform any of the Work in the areas or sections marked "HOLD" on the Specifications and Drawings until revised Specifications and Drawings are received with the "HOLD" markings deleted.
- C. Notice of Delay. If Contractor's schedule will be delayed by "HOLD" markings on Specifications and Drawings, Contractor shall report such delay to Owner or Owner's Representative in writing not less than **five (5) working days** prior to the start of the delay.

- D. Drawings at Jobsite. Contractor shall maintain at the Jobsite a complete and current set of Drawings and Specifications.

### 3.3 MANUFACTURER'S INSTRUCTIONS

Contractor shall, unless otherwise specified, comply with manufacturer's latest printed instructions for materials, supply, storage and installation methods, and notify Owner or Owner's Representative in writing of any conflict between the Specifications and Drawings and the manufacturer's instructions. Owner or Owner's Representative will designate which document is to be followed.

### 3.4 CONDITIONS AND RISKS OF WORK; VERIFICATION OF CONTRACT DOCUMENTS

- A. Conditions and Risks. Contractor represents that Contractor has carefully examined the Drawings and Specifications for the Work and has fully acquainted itself with all other conditions relevant to the Work, and its surroundings, including soil conditions, and Contractor assumes the risk of such conditions, waives any and all claims arising out of such conditions, and will fully complete the Work for the stated Contract Price without further recourse to Owner, regardless of such conditions, the expense, difficulty of performing the Work, or negligence, if any, of Owner or Owner's agents. Information on the Site and local conditions on the Site furnished by Owner in the Specifications, Drawings or otherwise is not guaranteed by Owner and is furnished only for the convenience of Contractor. Except as otherwise provided in the Contract, any omissions from the Contract of elements of the Work, including design, materials, construction or equipment shall not relieve Contractor from furnishing the same if such are required in order to finish the Work as contemplated by the Contract. Any such changes, additions or deletions shall not constitute a change under **Article 9.1, CHANGES IN THE WORK**, and shall not in any way increase the Contract Price.
- B. Verification of Contract Documents. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, including the Drawings and Specifications, as well as other the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it. The Contractor shall verify that the applicable Work set forth in the Contract Documents is consistent with the existing conditions and that there are no conflicts between the Contract Documents and the existing conditions. The Contractor shall promptly report in writing to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor and not proceed with the applicable Work until such error, inconsistency, or omissions is resolved. If the Contractor fails to perform the obligations set forth in this section, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

### 3.5 EQUIPMENT AND MATERIAL DEVIATIONS

Whenever any material or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's names, model numbers, etc., it is intended to establish a required standard of design and quality, and is not intended to limit competition. It shall be expressly understood, however, that if the phrase "or approved equal" is inserted following the naming of manufacturers for any such material or equipment, Contractor may propose at the time of bidding only an alternative manufacturer for such material or piece of equipment. The alternative material or piece of equipment may only be used upon approval of Owner or Owner's Representative. If the phrase "or approved equal" is not inserted, the material or piece of equipment used must be exactly as identified on the Drawings or in the Specifications.

## ARTICLE IV.

## MATERIALS AND EQUIPMENT

### 4.1 PROTECTION OF WORK AND PROPERTY

- A. Protection of Material and Equipment. Contractor shall at all times in accordance with the best practices and at no additional cost to Owner, preserve and protect material and equipment used by Contractor in the execution of the Work from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.
- B. Protection of Property. Contractor shall at all times in accordance with the best practices and at no additional cost to Owner, protect from damage due to Contractor's operations, equipment and materials (whether stored or installed), paving, structures and any and all other items or property on the Site, including any unnecessary damage to trees, shrubs, landscaping, or other vegetation, belonging to Owner or its agents. Contractor shall also protect adjacent property, whether belonging to Owner or not, from damage.
- C. Contractor's Responsibility for Losses. Owner shall not be responsible for any loss suffered by Contractor, or damage to the Work or to materials, tools and equipment of Contractor or of any other contractor, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage that may be directed by Owner or Owner's Representative. Contractor shall also, at its own expense, promptly repair, restore or replace any property of Owner, Owner's Representative, Contractor, any subcontractor, sub-subcontractor, supplier or other contractors, which Contractor, Subcontractor, Sub-subcontractor or its lower tier subcontractors or Suppliers or their respective employees, agents or invitees, may damage, destroy or lose.
- D. Survey Monuments and Survey Control. Monuments and/or bench marks for setting out the Work are established on the Jobsite and described in the Drawings. Contractor shall carefully preserve all monuments, bench marks, reference points, and stakes. Contractor will be charged with the expense of replacement or repair of any such items destroyed or damaged, and shall be responsible for any mistake or loss of time that may be caused thereby. Permanent monuments or bench marks which must be removed or disturbed shall be protected until they can be properly referenced for relocation. Contractor shall furnish materials and assistance for relocation and for the proper replacement of such monuments or bench marks.
- E. Climate Conditions. When so ordered by Owner or Owner's Representative, Contractor shall suspend any part of the Work that may be subject to damage by climatic conditions.

### 4.2 TEMPORARY HEATING

Contractor shall provide heat, fuel, and services as necessary to protect all Work and materials against injury from dampness and cold until Final Acceptance of all Work in the Contract, unless the buildings are fully occupied by Owner prior to such acceptance, in which case Owner will assume all expense of heating from the date of occupancy.

### 4.3 CONSTRUCTION EQUIPMENT SUPPLIED BY CONTRACTOR

Construction equipment obtained or furnished by Contractor which is to be used by Contractor on the Jobsite shall be in first-class operating condition, safe, fit for the uses for which intended, and suitable for the safe, legal and efficient performance of the Work. Such equipment shall be subject to inspection from time to time by Owner and Owner's Representative. Any such equipment of Contractor which is rejected by Owner or Owner's Representative as not conforming with the forgoing shall be promptly removed by Contractor and replaced with equipment acceptable to Owner or Owner's Representative, without additional cost to Owner and without delaying the Schedule.

#### 4.4 CONTRACTOR'S SHIPMENTS

- A. Arrangement of Shipments and Related Agreements. Contractor shall be responsible for arranging all shipments of Contractor supplied materials and equipment to the Jobsite and shall consign such shipments to itself as consignee at the Project shipping address, freight fully prepaid, f.o.b. Owner's Site. Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments.
- B. Foreign Trade Subzone Regulations. Contractor shall ensure that all shipments comply with all rules and regulations of the Foreign Trade Subzone regulations, all as more fully set forth in **Article 6.2-B, LAWS AND REGULATIONS**, hereof.
- C. Notice to Owner. Contractor shall advise Owner or Owner's Representative in writing in advance of major shipments of Contractor's materials and equipment and shall coordinate with Owner or Owner's Representative the arrival, unloading and release of carriers' equipment. Contractor shall promptly unload its shipments and promptly release carrier's equipment.
- D. Inability to Unload Shipment. In the event Contractor may be unable to promptly unload its shipment, Contractor shall notify Owner or Owner's Representative of such inability not less than **ten (10) working days** in advance of arrival. Owner or Owner's Representative, at its option, may unload or make arrangements for others to unload such shipments for the account and risk of Contractor. Contractor will promptly pay Owner for such costs of unloading.

#### 4.5 PREPARATION FOR SHIPMENT

- A. General. Preparation for shipment of equipment, materials, supplies, etc. shall be conducted in a manner so as to properly protect and ensure its safe arrival. Contractor shall be solely responsible for the adequacy of the preparation for shipment provisions employed with respect to materials and application to provide materials to their destination when handled by commercial carrier systems.
- B. Cleaning. All equipment shipped to the Jobsite shall be cleaned by Contractor prior to its shipment from Contractor's fabrication or storage facility. Contractor shall exercise great care to ensure that all equipment is free of dirt and other contamination.
- C. Packaging. All equipment, following cleaning at shipping point, must be packaged as such to provide adequate protection prior to transportation to the Jobsite. Packaging must be complete so as to prevent contamination of equipment and fabrication during transit to the Jobsite, as well as in storage at the Site.
- D. Storage. All materials and equipment unloaded at the Site shall be stored in a protected manner by Contractor. Contractor shall be responsible for providing proper shoring underneath all material and equipment on the Jobsite (this is applicable to both paved and unpaved areas). Protection of all equipment and material shall be the sole responsibility of Contractor. Contractor shall systematically store all small parts and wiring on pallets in a neat manner. Owner makes no representation regarding the existence or adequacy of laydown areas at or near the Jobsite for Contractor's materials, equipment, supplies and tools, and Owner shall not be obligated to provide any specific storage space or a laydown area.
- E. Markings. Contractor shall not mark equipment in any manner unless specifically approved by Owner or Owner's Representative in writing. All approved markings must be neatly laid out and painted.

- F. Bolts and Nuts. All loose bolts and nuts shall be shipped in watertight barrels. All threads of bolts, including exposed parts of pre-fabrication items shall be coated with a metallic base waterproof lubricant and covered with metal protectors.
- G. Bracing and Supports. Suitable bracing and supports shall be provided to prevent damage during shipment. This bracing and support shall be painted yellow to denote required removal before operation.

#### 4.6 CONTROL OF OWNER FURNISHED MATERIALS AND EQUIPMENT

- A. Acceptance Procedures. Materials and equipment, if any, furnished by Owner shall be received by Contractor in the presence of Owner or Owner's Representative and quantities thereof shall be checked jointly by Contractor and Owner or Owner's Representative. The delivery and acceptance of all such materials and equipment shall be recorded in writing, and Contractor shall evidence receipt and acceptance of such materials and equipment by signing forms satisfactory to Owner or Owner's Representative.
- B. Damage to Materials. Contractor shall carefully note any visible damage to Owner furnished materials and equipment prior to Contractor's acceptance of delivery.
- C. Responsibility for Loss. After Contractor has accepted delivery of such materials and equipment, Contractor shall assume full responsibility for any loss of or damage to such materials and equipment.
- D. Surplus Materials. Contractor shall notify Owner or Owner's Representative of any materials and equipment supplied to Contractor by Owner which are surplus and without additional compensation, shall cooperate with Owner and Owner's Representative in the disposition of such surplus as directed by Owner or Owner's Representative.
- E. Misfit of Materials. Contractor shall notify Owner or Owner's Representative of any lack of, or requirement for, materials and equipment required under the Contract to be supplied by Owner (if any) in sufficient time for Owner to furnish said materials or equipment in advance of Contractor's need. In the event of a misfit of Owner furnished materials or equipment, Contractor shall promptly notify Owner or Owner's Representative of such misfit. Contractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Owner furnished materials or equipment and to continue progress of other portions of the Work pending correction of such misfit and/or the furnishing of materials or equipment.

#### 4.7 TITLE TO MATERIALS AND EQUIPMENT

- A. Title to Materials and Equipment. Good and clear title to all materials and equipment furnished by Contractor under the Contract for the Work shall, except as expressly provided otherwise elsewhere in the Contract, pass to Owner upon the earlier to occur of payment to Contractor therefor or incorporation thereof into the permanent plant. Contractor shall ensure that Suppliers from whom Contractor obtains materials and equipment do not retain, encumber or reserve title to such items. Contractor shall assign to Owner any and all rights under any warranties it may have received or be entitled to from the Suppliers of the goods incorporated into the Work to the extent such warranties extend beyond the period of Contractor's warranties hereunder.
- B. Any and all manufacturer's and contractor's warranties covering the Work shall strictly comply with the requirements set out in the Drawings, Specifications, terms, conditions, exhibits, attachments, and other Contract Documents and the building code then in effect for the Owner's Site. In the event of a conflict between the Contract Documents, the warranty shall meet the strictest and most demanding requirement found within the Contract Documents. The warranty

shall be a term type, without deductibles or limitations on coverage, or coverage amount. Contractor agrees that the cost of such warranty has been factored into the Contract Price. No warranty provided as part of any submittal to any design professional by Contractor or its suppliers or other Subcontractors shall be acceptable to Owner unless Owner approves of such warranty in writing.

- C. Risk of Loss. Notwithstanding the provisions of **Article 4.7-A** above, the risk of loss, care, custody and control of Contractor's Work incorporated into the permanent plant shall remain with Contractor until such Work has been accepted in writing by Owner and shall thereupon pass to Owner unless Owner notifies Contractor in writing that such care, custody, and control is assumed by Owner at an earlier date. The taking of possession of such Work pursuant to **Article 8.4, POSSESSION PRIOR TO FINAL COMPLETION**, shall not constitute the assumption of risk of loss, care, custody and control of such Work until such time as such Work has either been accepted in writing by Owner or Contractor has been notified as set forth herein.

## ARTICLE V.

### LABOR REQUIREMENTS

#### 5.1 CONTRACTOR'S PERSONNEL

- A. Qualified Personnel. Contractor shall provide an adequate number of qualified and competent supervisory staff, craftpersons and other personnel to perform the Work. At all times during the course of the Work, Contractor shall provide at the Jobsite a qualified, competent and responsible supervisor who shall be satisfactory to Owner and Owner's Representative. The supervisor shall have authority to represent Contractor and directions given to him shall be binding on Contractor. Contractor shall give the supervisor, in writing, complete authority to act on behalf of, and to bind Contractor in all matters pertaining to the Work and the Contract. Contractor shall furnish Owner and Owner's Representative a copy of the authorization. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of the Work without the prior written approval of Owner. In the event that a key personnel member ceases working for Contractor, is transferred from the Project or is removed from the Project, Contractor shall replace this key personnel member with a qualified replacement within seven (7) days.
- B. Removal of Employees of Contractor or Subcontractor. Any employee of Contractor or of Contractor's Subcontractors or Sub-subcontractors deemed by Owner or Owner's Representative, in its sole judgment, to be objectionable shall be removed from the Jobsite immediately upon Owner's request or Owner's Representative's request and shall be promptly replaced by Contractor or by Contractor's Subcontractors or Sub-subcontractors at no additional expense to Owner.
- C. Changes in Personnel. Owner may request changes in personnel performing the Work necessary to improve the safety, quality and/or efficiency of the Work. Contractor will maintain continuity of key personnel throughout all phases of the Work. Changes in key personnel will not be effected without Owner's prior written approval or Owner's Representative's prior written approval which shall not be unreasonably withheld.
- D. Organizational Chart, Personnel, and Experience Statement. Contractor shall submit the information requested by Owner relating to Contractor's key personnel.

#### 5.2 LABOR HARMONY

Contractor agrees that all labor employed by it, its agents, Subcontractors and/or Sub-subcontractors for the Work on the Jobsite shall be in harmony with and be compatible with all other labor used by Owner or

other contractors. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Contractor shall immediately give notice thereof including all relevant information to Owner and Owner's Representative and shall immediately take any and all actions necessary, including legal action, to restore and maintain labor peace.

### 5.3 EMPLOYMENT CERTIFICATIONS AND PRACTICES

- A. Equal Opportunity Employer. Contractor certifies that it has a policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, disability or veteran status, that it maintains no employee facilities segregated on the basis of any protected classification and that it is not debarred or suspended from being awarded Federal or Federally assisted contracts. Contractor shall comply with Owner's policy regarding Minority- and Women-Owned Business Enterprises as set forth in the Instructions to Bidders.
- B. Other Applicable Laws. If applicable to the Contract, the following laws, orders and regulations, as amended, are hereby incorporated by reference: Executive Order 11246 (Equal Employment Opportunity); Vietnam Era Veterans Readjustment Act; Rehabilitation Act of 1973; Veterans Compensation, Education and Employment Act; 41 CFR 601.7 (EEO1 Reports); 41 CFR 601.40 (Affirmative Action Plans); 41 CFR 61650 (Veterans Employment Reports); 42 U.S.C. §12101 et seq. (Americans with Disabilities Act).
- C. Fair Labor Standards Acts. Upon request of Owner or Owner's Representative, Contractor will furnish it with a certificate satisfactory in form to Owner that goods furnished by Contractor, its Subcontractors, Sub-subcontractors and Suppliers in performance of the Contract were produced in full compliance with the requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

### 5.4 COMPLIANCE WITH OWNER'S RULES

Contractor shall comply strictly with Owner's rules governing the conduct of Contractor and Contractor's employees, agents, Subcontractors and Sub-subcontractors at and about the Jobsite. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents, Subcontractors and Sub-subcontractors at the Jobsite comply strictly with such rules. Contractor shall also adhere to the standards and requirements regarding sustainability and environmental protection as specified in the current version of MBST 36. Owner reserves the right, from time to time, to revise any such rules, and Contractor shall comply fully with such rules as revised in accordance with the foregoing provisions. Contractor shall not permit its employees, agents, Subcontractors or Sub-subcontractors to disparage or defame Owner, Owner's products or Owner's employees.

### 5.5 LOCAL LABOR AND SERVICES

Local contractors, including suppliers of materials and services, and local labor forces are to be utilized in the Work to the maximum extent practicable.

## ARTICLE VI.

### PERMITS, LAWS, AND SURVEYS

#### 6.1 PERMITS AND LICENSES

Contractor shall promptly apply for and procure without additional compensation all permits (except for such permits as may be specifically set forth as furnished by Owner in the applicable Order), certificates and licenses required by governmental authorities having jurisdiction over the Work, Contractor or the

location of the Work. Contractor obligates itself to reimburse Owner on demand for all sums Owner may be required to pay under such laws in the event of Contractor's failure to comply with the requirements of this article. Contractor represents that it is properly licensed as a general contractor in the State and jurisdiction in which the Work shall be performed and has complied with all local, state and federal requirements regarding business licensing and qualification to do business in the State and jurisdiction in which the Work shall be performed.

## 6.2 LAWS AND REGULATIONS

- A. Compliance with all Laws, etc. The Parties hereby confirm that they are aware of the Applicable Laws, and, in connection with the activities of the Parties related to the Contract, Contractor hereby commits to strict compliance with such Applicable Laws and makes the following representations and warranties as of the date of the Contract and for the duration of the Contract in connection with its activities related to the Contract:
- (1) Contractor, for itself and on behalf of its Affiliated Persons, represents, warrants and covenants that:
    - (i) Contractor and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and will comply, with Applicable Laws and have to their best knowledge not taken and will not take or fail to take any action, which act or omission would subject Owner or its affiliated companies to liability under Applicable Laws;
    - (ii) neither Contractor nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (a) influencing any act or decision of such Government Official in his official capacity, (b) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such Government Official to use his influence with a Government Entity to affect or influence any act or decision of that Government Entity, in each instance to direct business to Contractor or Owner or its affiliated companies;
    - (iii) in case Contractor or any of its Affiliated Persons is or will become a Government Entity or a Government Official whose official duties include decisions to direct business to Contractor, Owner or its affiliated companies or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to Contractor or Owner or its affiliated companies, Contractor or the respective Affiliated Persons have to make sure, that conflicts of interest will be excluded and to inform Owner without undue delay about the measures taken; and
    - (iv) Contractor has a duty to ensure that any employees used on site at Owner and/or that any employees given access to any IT-systems in connection with fulfilling the requirements of the Contract must receive an admission and/or access authorization from Owner. Individuals to whom Owner or any Owner affiliate has declared a house ban, an admission ban, and/or an access ban cannot be used by Contractor in fulfillment of the Contract.
  - (2) Contractor shall assist and cooperate fully with the efforts of Owner to comply with Applicable Laws. In particular, Contractor shall keep accurate books and records and Contractor shall immediately notify Owner of any information that bribes or other improper payments are being requested, made or offered in connection with the Contract. Upon request of Owner, Contractor shall make those records which are necessary for Owner to verify Contractor's compliance with the Applicable Laws relating to the Contract available to a sworn auditor who is obligated to observe secrecy and selected by Owner. If such auditor notices any failure by Contractor to comply with the



Applicable Laws Contractor agrees that the auditor may disclose information relating to Contractor's failure to Owner and, to the extent required by a legal demand by a competent court of law or government body, to third parties.

- (3) In no event will Owner be obligated to Contractor under or in connection with the Contract to act or refrain from acting if Owner believes that such act or omission would cause Owner to be in violation of Applicable Laws. In no event will Owner be liable to Contractor for any act or omission which Owner believes is necessary to comply with Applicable Laws.
- (4) If Contractor or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this Article each of which is deemed to be material and continuously made throughout the term of the Contract, then, in addition to any other rights Owner may have under the Contract:
  - (i) Owner may declare a forfeit of any unpaid amounts owing to Contractor and will be entitled to repayment of any amounts paid or credited to Contractor, in each case, which are prohibited by Applicable Laws; and
  - (ii) Owner may immediately terminate the Contract; and
  - (iii) Contractor shall, upon first written request by Owner, indemnify and hold harmless Owner in regard to any and all cost and claims brought forward against Owner arising out of any failure of Contractor to comply with its representations, warranties and covenants of this Article.

- B. Foreign Trade Subzone. Contractor understands and agrees that Owner's facility where the Work is to be performed under the Contract Documents has been designated a Foreign Trade Subzone pursuant to 19 U.S.C. §81b. As such, all vehicles and persons entering or departing the Foreign Trade Subzone are subject to Owner or Owner's Representative inspection and Contractor may be required to provide a general inventory of any and all tools, equipment, materials or merchandise passing in or out of the Foreign Trade Subzone during the course of the Work, but in particular, those items of equipment of a material nature such as compressors, welders, generators, etc. Contractor further agrees to strictly comply with all requirements of the Foreign Trade Zones Act (19 U.S.C. §81a et seq.) and all rules, regulations, or laws of any kind relating to the Foreign Trade Zones Act which are now or hereafter prescribed by governmental authority to include, but not be limited to:

Controlled vehicular plant entrance via gate 3 on Highway 11. A vehicle pass shall be required for entrance at all times.

Identification badges for all contractors. Identification badges must be clearly and visibly displayed while in the Foreign Trade Subzone.

Compliance with all Owner's and Owner's Representative's safety/security regulations and requirements.

Any and all Foreign Trade Subzone perimeter fence alterations shall not be permitted without prior written authorization of Owner Security and Owner Foreign Trade Subzone departments. Damages to perimeter fencing/gate/structural integrity shall be immediately reported to Owner Safety Department.

- C. Communications with Government Authorities. Contractor shall not, under any circumstances, apply for, enter into, or otherwise pursue negotiations with any governmental authority or agency to seek any approval, authorization, permission or acceptance for any variance, modification or revision to any and all Environmental Requirements or any and all federal, state or local safety or

health laws, rules or regulations, including without limitation, federal and state industrial hygiene rules and regulations relating to the performance of the Work under the Contract without Owner's prior written approval thereof.

- D. Environmental. In addition to **Article 6.2-A** above, Contractor shall not, under any circumstances, cause or permit the discharge, spill or release of any Hazardous Material in connection with the Work to be performed hereunder, in violation of any Environmental Requirements which are now or hereafter promulgated by any federal, state or local governmental authority. As an inducement to award of the Contract, Contractor represents and warrants that it is and will remain in full compliance with and will adhere to all Environmental Requirements and, if necessary, obtain or arrange for, at its expense, all identification numbers, applications and other governmental approvals, certificates, licenses, permits, or the like, required in connection with the Work. Without limiting the effect of the foregoing, Contractor agrees that it will (i) not store any hazardous wastes at the Jobsite for periods in excess of **ninety (90) days** or in violation of the applicable site storage limitations imposed by law, Owner, Owner's Representative, or Owner's agents, whichever shall be more restrictive; (ii) not permit any accumulation in excess of the small quantity generator exemption of Part 261 of Title 40 of the Code of Federal Regulations or other applicable law, as amended; (iii) take, at its expense, all actions necessary to protect third parties, including without limitation, employees and agents of Owner and Owner's Representative, from any exposure to, or hazards of, any Hazardous Material generated or utilized in Contractor's operations; and (iv) report to Owner immediately all discharges, releases and spills of any Hazardous Material and, if by rule or regulation Contractor is also required to make such report to a governmental agency, Contractor shall also make such report. Further, if in the performance of the Contract, Contractor is required to use a chemical substance or mixture, or any material which may generate or release a chemical substance or any hazardous agents, Contractor shall provide before or with said use a Material Safety Data Sheet (Federal OSHA Hazard Communication Standard, 29 CFR 1910.1200) and label which are current, accurate and complete and include, without limitation, a statement of product hazards and precautions for safe use.
- E. Immigration. Contractor agrees that it and its agents, employees and Subcontractors will at all times comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (as amended), the South Carolina Illegal Immigration and Reform Act, and all other state or federal laws regulating the employment of aliens (including, but not limited to, those which make it unlawful for an employer to employ or continue to employ an alien knowing the alien is or has become unauthorized with respect to such employment or to fail to comply with the I-9 or E-Verify requirements), and any successor statutes, laws, rules and regulations (collectively, the "Immigration Laws"). Contractor will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform any Work in connection with the Project. Furthermore, Contractor will not knowingly allow any of its Subcontractors to employ or continue to employ any unauthorized aliens to perform any Work in connection with the Project. Prior to performing any work on the Project, Contractor agrees to enroll and maintain enrollment in the federal work authorization program administered by the U.S. Department of Homeland Security commonly known as E-Verify or any subsequent replacement program (the "E-Verify program") and to utilize the E-Verify program during the performance of the Contract in accordance with the Immigration Laws. Contractor will retain and make available for inspection by any authorized governmental agency a properly completed I-9 Employment Eligibility Verification Form for each and every employee who enters the Project Site, and an E-Verify case result for any such employee whose date of hire is after the date of Contractor's enrollment in E-Verify. If Contractor receives actual knowledge of the unauthorized status of one of its Project Site employees, or if Contractor learns of facts that would lead a reasonable person to infer the unauthorized status of any Site employee, Contractor will immediately remove that employee from the Project Site, inform Owner, and shall require each Subcontractor to act in a similar fashion with respect to such Subcontractor's employees.

Contractor agrees to include a provision in all subcontracts requiring that each Subcontractor shall comply with the duties and responsibilities with regard to its employees that the Seller has agreed to in this section. Contractor agrees to defend (at Owner's option, and with counsel acceptable to Owner), indemnify and hold harmless the Owner as to any fines, damages and other liabilities of any kind, including, but not limited to, any damages resulting from work stoppages or delays, arising out of or relating to the breach of this section or noncompliance with any Immigration Laws by Contractor or Subcontractors.

### 6.3 ROYALTIES, PATENTS, AND COPYRIGHTS

- A. Royalty and License Fees. Contractor shall pay all royalties and license fees which relate to any material or process used or incorporated into the Work by Contractor.
- B. Patents.
- (1) If Contractor has information that any process, article or item specified or delineated by Owner or Owner's Representative is an infringement of a patent, or a copyright, he shall promptly give such information to Owner or Owner's Representative.
  - (2) Contractor shall hold and save Owner and his agents and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by Owner.
  - (3) Contractor shall defend all suits and claims whatsoever for infringement of patent rights and Owner may at its option be represented in any such suit or proceeding.
  - (4) In addition to the obligation of Contractor to hold Owner harmless from liability for patent infringement, if the use of the Work or the sale or use of any of the materials or equipment or any part thereof furnished hereunder is held in any legal proceeding to constitute an infringement of any patent and is enjoined, Contractor shall, at its sole expense and with Owner's approval: (i) procure for Owner the right to sell and use such Work, materials, or equipment; or (ii) replace same with substantially equal but non-infringing Work, materials, or equipment; or (iii) modify same so as to make them substantially equal but non-infringing; or (iv) remove same and refund the purchase price including transportation and installation costs thereof.

### 6.4 SURVEYS

- A. Engineering Services. Without extra cost to Owner, Contractor shall provide competent engineering services to execute the Work in accordance with Contract requirements. Contractor shall verify the figures given for the contours, approaches and locations shown on the Drawings before undertaking any construction work and be responsible for the accuracy of the finished Work.
- B. Licensed Surveyor. Without extra cost to Owner, Contractor shall engage a licensed surveyor, if necessary, to verify boundary lines, keep within property lines, and shall be responsible for encroachments on rights or property of public or surrounding property owners.
- C. Other Requirements. Contractor shall establish all base lines for the location of the principal components of the Work and make all detail surveys necessary for construction, including slope stakes, batter boards and other working points, lines and elevations. If Contractor finds any errors or discrepancies, or that any previously established references have been destroyed or misplaced, he shall promptly notify Owner or Owner's Representative.

## ARTICLE VII.

### WORK QUALITY STANDARDS

#### 7.1 GUARANTEES

- A. Quality of Work. Contractor guarantees to Owner that the Work shall comply strictly with the provisions of the Contract and all Specifications and Drawings referred to in the Contract or thereafter furnished by Owner or Owner's Representative; and that the Work shall be first-class in every particular manner, and free from defects in materials and workmanship and free from defects in any design or engineering furnished by Contractor, and fit for its intended purpose. Further, the Work shall be in accordance with the highest quality of construction industry practices and applicable standards and industry codes, of a good and workmanlike character appropriate for a first class, state of the art project of this nature and magnitude, and in compliance with all applicable federal, state and local laws, ordinances and regulations and those of any regulatory body having jurisdiction over all or part of the Work, Contractor, the Project or the Site.
- B. Quality of Materials, Equipment and Supplies Contractor further guarantees Owner that all materials, equipment and supplies furnished by Contractor for the Work shall be new, merchantable, of the most suitable grade, and fit for their intended purposes.
- C. Quality of Services. Contractor further warrants to Owner that all services supplied by Contractor in performance of the Contract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. Contractor agrees that it is supplying professional services, findings, and/or recommendations as a part of the performance of the Contract and warrants to Owner that the same shall conform with high professional and engineering principles which are generally accepted in the United States.

#### 7.2 CORRECTION OF DEFECTIVE WORK

- A. Correction of Defective Work Before Final Acceptance. Owner or Owner's Representative may reject any or all parts of the Work that is Defective Work. Rejection by Owner or Owner's Representative of any or all parts of Defective Work shall be final and binding. Such Defective Work shall be promptly corrected or replaced by Contractor at Contractor's expense. If Contractor fails to commence and diligently continue correction or replacement of such Defective Work immediately after receipt of written notice from Owner or Owner's Representative to correct or replace the Defective Work, Owner or Owner's Representative may, at its option, remove and replace the Defective Work, and Contractor shall reimburse Owner within **ten (10) days** of receipt of Owner's invoice for the costs of such removal and replacement of Defective Work.
- B. Correction of Defective Work After Final Acceptance. Without limitation of any other rights or remedies of Owner, if any defect in the Work arises within the Correction Period such that the Work becomes Defective Work then Contractor shall, upon receipt of written notice of such defect promptly furnish, at no cost or expense to Owner, design and engineering, labor (including travel related expenses), equipment, materials and construction services (including freight charges) necessary to correct such Defective Work and cause the Work to comply fully with the guarantees in the Contract. Any period during which the Work is not available for use due to defects in the Work furnished by Contractor shall extend Contractor's obligation of correction by an equal period of time.
- C. Owner's Right To Correct Deficiencies. In the event Contractor shall have been notified of any Defective Work and shall fail to promptly commence and adequately complete the correction of such Defective Work within **twenty (20) days** of such notices, Owner shall have the right, without

prejudice to any other remedy it may have, to correct or to have such Defective Work corrected for the account of Contractor, and Contractor shall reimburse Owner the costs incurred in correcting such Defective Work within **ten (10) days** after receiving Owner's invoice therefor.

- D. Reimbursement of Costs by Contractor. Contractor shall also reimburse Owner for all direct costs incurred by Owner as a result of the existence and continuance of any and each such breach of warranty, including without limitation direct costs incurred in connection with any such breach.
- E. Acceptance by Owner of Nonconforming Work. If Owner prefers to accept the Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### 7.3 INSPECTIONS AND TESTING

- A. Inspection of Materials, Supplies and Equipment. Contractor shall inspect all materials, supplies and equipment which are to be incorporated in the Work to ensure they are suitable for the Project.
- B. Inspection and Test of Work. Contractor shall, during the course of performance of the Work hereunder, without additional compensation, make or cause to be made all tests required by the Contract. Owner or Owner's Representative may require additional inspections and tests. Contractor shall furnish Owner or Owner's Representative with documentation satisfactory to Owner or Owner's Representative in every respect of the results of all inspections and tests. Owner or Owner's Representative shall be given not less than **five (5) working days** notice of any tests to be made by Contractor or Contractor's suppliers in order that Owner or Owner's Representative may witness any such tests. All test protocols and procedures are to be reviewed and approved in advance by Owner or Owner's Representative.
- C. Right to Inspect. Owner and Owner's Representative, as well as others as may be required by applicable laws, ordinances and regulations, shall have the right at all reasonable times to inspect the Work and all material, supplies and equipment for the Work at the Jobsite and at Contractor's and its Suppliers', Subcontractors' and Sub-subcontractors' shops for conformance with the Contract. Contractor shall provide, or cause to be provided access and sufficient, safe and proper facilities for such inspections. Neither the failure to make such inspection nor to discover defective workmanship, materials or equipment, nor approval of or payment to Contractor for such Work, materials or equipment shall prejudice the rights of Owner. Contractor shall bear all costs of tests and inspections required by the Contract Documents, or by applicable laws, ordinances or regulations.
- D. Uncovering Work and Restoration. If Contractor covers any portion of the Work prior to any inspection or test provided for in the Specifications, inspection schedule, or as previously requested by Owner or Owner's Representative, the cost of uncovering and covering the Work to allow for such inspection or test shall be borne by Contractor. Re-examination of any of the Work may be ordered by Owner or Owner's Representative. In the event of such re-examination, if any part of the Work is determined by Owner or Owner's Representative to be Defective Work, Contractor shall not be reimbursed for uncovering, repair or corrective and restoration costs. If such Work is found to no longer be Defective Work, Owner shall pay Contractor the cost of uncovering and restoration.

### 7.4 QUALITY CONTROL

- A. Quality Control Program. Contractor shall conduct a continuous program of quality control for all the Work to ensure and verify that the quality of the Work meets the requirements of this

Contract. Contractor's quality control program and inspection procedures for the foregoing shall be submitted in writing to Owner or Owner's Representative for review and approval, in sufficient detail to delineate those items to be inspected and the manner in which they are to be inspected, and shall adequately describe all quality control activities contemplated, including provisions for adequate documentation of Contractor's performance of such quality control and inspection.

- B. Compliance with Industry and Regulatory Standards. The Work and Contractor's performance under the Contract shall be in accordance with the highest professional construction industry practices and applicable standards and industry codes, of a good and workmanlike character and in compliance with all applicable Federal, state and local laws, ordinances and regulations and those of any regulatory body having jurisdiction over all or part of the Work, Contractor, the Project, or the Site.

## 7.5 SAMPLES

- A. Submission of Samples. If required by Owner or Owner's Representative, Contractor shall, without undue delay, furnish and submit to Owner or Owner's Representative any samples that require Owner's or Owner's Representative's approval, and also any samples that may be requested by Owner or Owner's Representative, of any and all materials or equipment Contractor proposes to use, and shall prepay all shipping charges on the samples. Samples shall be furnished sufficiently in advance to allow Owner or Owner's Representative reasonable time for examination, investigation, or consideration, without delay to the Work. Where samples are required, they shall be submitted by and at the expense of Contractor. Such submittal shall be made not less than **thirty (30) calendar days** prior to the time that the materials represented by such samples must be ordered (if the materials must be ordered) or are needed for incorporation into any of the Work or other portion of Owner's facility relating or adjacent to the Work.
- B. Approval Required. No materials or equipment of which samples are required to be submitted for approval shall be used on the Work until such approval has been received, save only at Contractor's risk and expense. After a material has been approved by Owner or Owner's Representative, no additional samples of that material will be considered and no change in brand or make will be permitted. The approval of any sample by Owner or Owner's Representative will be only for the characteristics or for the uses named in such approval and shall not be construed in itself to change or modify any Contract requirements. Samples which have been approved may, at Owner's option, be returned to Contractor for incorporation into the Work.
- C. Labels. Each sample shall have a label indicating the material represented, its place or origin and the name of the producers, Contractor, and the portion of the Work for which the material is intended. Where manufacturer's printed instructions for installations are required, duplicate copies of such directions shall be submitted with samples.
- D. Required Markings. Samples of finished material shall be marked to indicate where the materials represented are required by the Drawings or Specifications.
- E. Description of Sample. A letter shall be submitted with each shipment of samples to Owner or Owner's Representative containing a list of the samples, the name of the portion of the Work for which the materials are intended, and the brands of materials and names of the manufacturers.
- F. Testing. Test samples, as Owner or Owner's Representative may deem necessary, will be produced from the various materials delivered to Contractor for use in the Work. Owner may require random test samples. If any of these test samples fail to meet the Specification requirements, any previous approvals will be withdrawn and such materials shall be subject to removal and replacement by Contractor with materials meeting the specification requirements. The defective materials may be permitted to remain in place subject to proper credit or

adjustment of the Contract Price as set forth under **Article 7.2, CORRECTION OF DEFECTIVE WORK**, above. Failure of any materials to pass the specified tests will be sufficient cause for refusal to consider any further samples of that material of the same brand or make for use in the Work.

## 7.6 CONTRACTOR REPRESENTATIONS

In addition to the other representations and agreements included within the Contract, Contractor represents and warrants that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work. Contractor represents and warrants that at the time of submission of its quotation for performance of the Work, it was properly licensed and qualified to do business in all governmental jurisdictions in which the Work is to be performed and covenants to maintain such licensing and qualification throughout the term hereof (including the Correction Period). Upon written request by Owner or Owner's Representative, Contractor shall furnish to it such evidence as Owner or Owner's Representative may require relating to Contractor's ability to fully perform the Contract.

## ARTICLE VIII.

### TIMING AND COMPLETION OF WORK

#### 8.1 SCHEDULING

- A. Scheduling of Work. Contractor shall schedule and coordinate the details of the Work being performed to meet the Schedule requirements set forth in the Contract. Within **thirty (30) calendar days** after award of the applicable Order and before submittal of the first progress payment invoice, Contractor shall prepare and submit, in accordance with the requirements of the applicable Order, to Owner or Owner's Representative for approval, a detailed schedule showing the sequence in which Contractor proposes to perform the Work, the start and completion dates of all separable portions of the Work, manpower forecasts, materials procurement and delivery plans and any other information requested by Owner or Construction Manager, if any, and shall provide the schedule and scheduling information requested in the manner and on the software asked for by Owner and the Construction Manager, if any. Contractor agrees to adhere to the Schedule approved by Owner or Owner's Representative and attend and participate in scheduled progress and coordination meetings called by Owner or Owner's Representative. Such Schedule shall not be amended or revised without Owner's or Owner's Representative's approval.
- B. Interference with Others. Contractor recognizes that Owner, other contractors and subcontractors may be working concurrently at the Jobsite. Contractor agrees to cooperate with Owner and other contractors so that the Project as a whole will progress with a minimum of delays. Owner reserves the right to direct Contractor to schedule the order of performance of its Work in such manner as not to interfere with the performance of others.

#### 8.2 PROGRESS REPORTING

- A. Weekly Progress Reports. During the performance of the Work, Contractor shall submit to Owner or Owner's Representative weekly progress reports on the actual progress and updated schedules as may be required by the Contract or requested by Owner or Owner's Representative.
- B. Recovery Schedule. In the event Contractor's performance of the Work is not in compliance with the Schedule established for such performance, Owner or Owner's Representative may, in writing, require Contractor to submit its plan for Schedule recovery, or specify in writing the steps to be taken to achieve compliance with such Schedule, and/or exercise any other remedies under the Contract. Contractor shall thereupon take such steps as may be necessary to improve its

progress without additional cost to Owner or Owner's Representative, including, without limitation, working after hours and on holidays and causing its Subcontractors, Sub-subcontractors and Suppliers to work after hours and on holidays.

- C. Failure to Comply. Upon determination by Owner or Owner's Representative that there have been unreasonable delays and that Contractor is not prosecuting the Work with such diligence as will ensure completion by the Final Completion date, Owner may terminate Contractor's right to proceed with the Work, or any separable part thereof.

### 8.3 UNSCHEDULED/INCIDENTAL OVERTIME

- A. Overtime Work. Contractor shall notify Owner or Owner's Representative in advance of any unscheduled or incidental spot overtime which Contractor elects to work due to non-disruptable work activities and emergencies to protect life and/or property. Overtime work, whether scheduled, unscheduled or incidental, shall be to Contractor's account unless the compensation therefore is specifically authorized and approved in writing by Owner or Owner's Representative.
- B. Amount of Payment. In the event Owner or Owner's Representative approves in writing compensation of Contractor's overtime in advance, such compensation as separately authorized shall be limited to the actual cost to Contractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Contractor shall submit supporting documents satisfactory in form and content to Owner or Owner's Representative for its verification and approval.

### 8.4 POSSESSION PRIOR TO FINAL COMPLETION

Owner shall have the right to move into Contractor's working and storage areas, and at any time prior to Final Completion, the right to take possession of or use any completed or partially completed part of Contractor's Work prior to Final Completion as Owner deems necessary for its operations. In the event Owner desires to exercise the foregoing right, Owner or Owner's Representative will so notify Contractor in writing. Such possession or use shall not constitute acceptance of Contractor's Work.

### 8.5 TIME OF PERFORMANCE

- A. Contractor shall complete the Work in accordance with the Contract within the Contract Price and shall achieve Final Acceptance on or before the Final Completion date.
- B. TIME IS OF THE ESSENCE as regards Contractor's performance of the Work. Except as otherwise expressly provided in **Article 9.3-A, DELAYS DUE TO FORCE MAJEURE**, hereof, in no event shall the Final Completion date be revised; provided that only in the event Contractor was unnecessarily delayed in the Final Completion of the Work, as retrospectively notified to Contractor by Owner or Owner's Representative, due exclusively to (i) an event of force majeure arising after the date hereof or (ii) a change, the execution of which Owner or Owner's Representative has instructed Contractor in writing to prosecute and which Contractor has performed, Owner or Owner's Representative shall grant Contractor an extension of time equal to that agreed upon in connection with such event pursuant to **Article 9.1, CHANGES IN THE WORK**, hereof or such change pursuant to **Article 9.3, DELAYS; EXTENSION OF TIME**, hereof, but in no event shall such extension of time exceed the total delay encountered, taking into account the ability of Contractor to reschedule activities (without Contractor being required to incur any additional expense as a result hereof) to minimize or eliminate the delays in the Final Completion of the Work, notwithstanding delays to certain portions of the Work.



- C. If Contractor should neglect to prosecute the Work properly or timely or fail to perform any of its other obligations under the Contract Documents, Owner or Owner's Representative, after three (3) days written notice to Contractor, may make good such deficiencies including without limitation hiring another contractor to make good such deficiencies and deducting the damages thereby suffered, in whole or in part, from the payment then or thereafter due to Contractor, without prejudice to any other remedy it may have to collect the said damages or any part thereof not so deducted.
- D. Owner and/or Owner's Representative shall have the right to expedite Contractor's, Subcontractors', Sub-Subcontractors' and Suppliers' work. Contractor agrees that Owner's communications and contacts with the Subcontractors, Sub-Subcontractors and Suppliers shall not give rise to a contractual relationship between any of them and Owner. Contractor shall include a provision to this effect in any contracts it enters into with the Subcontractors and Suppliers and shall require its Subcontractors to have such a provision in their subtier contracts.

## 8.6 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

- A. When Contractor deems the Work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in the Contract, Contractor shall, within **ten (10) working days** thereafter, give a written Notice of Completion of the Work to Owner or Owner's Representative, specifying the Work completed and the date it was completed. Within **thirty (30) calendar days** after receipt of said Notice of Completion, Owner or Owner's Representative may inspect the Work and shall either reject the Notice of Completion and specify Defective Work or uncompleted portions of the Work, or shall give Contractor a written Notice of Acceptance of the Work either for the purpose of final payment only, or for the purposes of final payment and Final Completion.
- B. In the event Owner or Owner's Representative rejects the Notice of Completion and specifies Defective Work or uncompleted portions of the Work, Contractor shall within **five (5) working days** of such notification, provide for Owner's or Owner's Representative's review and approval, a schedule detailing when all defects shall be corrected and/or the Work shall be completed and shall proceed to remedy such Defective Work and uncompleted portions of the Work. Thereafter, Contractor shall again give Owner or Owner's Representative a written Notice of Completion of the Work, specifying a new date for the completion of the Work based upon the date such Defective Work or uncompleted portions of the Work were corrected. The foregoing procedure shall apply again and successively thereafter until Owner or Owner's Representative has given Contractor written Notice of Acceptance for purposes of final payment and Final Completion.
- C. Any failure by Owner or Owner's Representative to inspect or to reject the Work or to reject Contractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the Work for any purpose by Owner nor imply acceptance of, or agreement with, said Notice of Completion.

## 8.7 REPORTING REQUIREMENTS & COORDINATION MEETINGS

Contractor shall, within **thirty (30) days** of the award of the applicable Order, submit the schedules and reports set forth below and, in addition, those schedules and reports as requested by Owner or Owner's Representative pursuant to **Article 8.1** above.

### A. Reports

- (1) A bar chart schedule as specified by Owner or Owner's Representative. The schedule will show manpower required by time intervals for each activity and shall reflect percent of schedule completion by time interval. The network diagram shall show in detail and in

orderly sequence all activities, their descriptions, duration and dependencies, necessary and required to complete the Work and any separable parts thereof. The activity listing shall show the following information for each activity on the network diagram:

- (i) Identification by code numbers and description as directed by Owner or Owner's Representative
- (ii) Duration
- (iii) Craft and equipment
- (iv) Start and finish dates
- (v) Engineering - Process/Mechanical/Electrical
- (vi) Material and Equipment Procurement
- (vii) Equipment Fabrication
- (viii) Vendor Tryout
- (ix) Submittal Dates and Submittal Approval Requirements - Include three (3) weeks for Owner Approval Cycle
- (x) Drawing Approvals
- (xi) Other Information Required
- (xii) Final Completion

**OR**

A critical path method (CPM) type chart in the form of an arrow diagram and activity listing. The network diagram shall show in detail and in orderly sequence all activities, their descriptions, duration and dependencies, necessary and required to complete the Work and any separable parts thereof. The activity listing shall show the following information for each activity on the network diagram:

- (i) Identification by code numbers and description as directed by Owner or Owner's Representative
- (ii) Duration
- (iii) Craft and equipment
- (iv) Start and finish dates
- (v) Engineering - Process/Mechanical/Electrical
- (vi) Material and Equipment Procurement
- (vii) Equipment Fabrication
- (viii) Vendor Tryout
- (ix) Submittal Dates and Submittal Approval Requirements - Include three (3) weeks for Owner Approval Cycle
- (x) Drawing Approvals
- (xi) Other Information Required
- (xii) Final Completion

- (2) A detailed schedule, in weekly intervals, of day-to-day operations showing planned manpower loadings for major activities.
- (3) Major construction equipment correlated to the Work schedule.
- (4) Contract daily reports for the Work performed at the Jobsite in a form satisfactory to Owner. Such daily reports shall include, at a minimum, the following information: (i) a list of subcontractors, craftsmen, and all other individuals on site; (ii) a description of the major equipment used and major shipments received; and (iii) a full description of work performed, including progress by schedule activity detailing quantities by activity.

- (5) Procurement schedule for the procurement and receipt of materials, equipment and subcontract services by Contractor and a monthly status report of all such materials and equipment.
- (6) Contractor shall further submit any other schedules or schedule-related information requested by Owner or Owner's Representative.

B. Weekly Coordination Meetings For The Work Performed at the Jobsite

- (1) A weekly written report showing actual manhours expended versus planned, and scheduled progress versus actual progress giving details of the Work completed in relation to the approved Schedule, together with a two week "look ahead" which provides details of how the Work will be completed. This report shall be submitted to coincide with a mutually scheduled weekly progress meeting. An updated Schedule shall be submitted in the event of an agreed Schedule change. Contractor shall keep a written record of all meetings with Owner or Owner's agents and shall transmit copies of such records within **four (4) days** after each such meeting to Owner and Owner's Representative.
- (2) Contractor shall attend a weekly (or other established frequency as may be determined by Owner or Owner's Representative) coordination meeting together with various contractors at the Jobsite.
- (3) The person or persons designated by Contractor to attend the meetings shall have all the required authority to make decisions and commit Contractor to solutions agreed upon during any coordination meetings.

C. Other Meetings

Contractor participation in certain nonproductive activities will be required. These activities will include, but not be limited to:

- (1) Indoctrination and orientation of all Contractor's employees prior to commencing Work at the Jobsite. (This includes the entire labor force and all new hires). The meeting will last approximately two (2) hours.
- (2) Weekly gang boxes safety meetings organized and conducted by Contractor and attended by all of Contractor's craft employees, shall be conducted each Monday. Contractor shall be responsible for arranging and conducting these meetings with its craft employees. The meeting will last approximately thirty (30) minutes.

Contractor will be required to submit proof of attendance by all employees along with that day's contract daily report.

- (3) Contractor shall be required to attend construction-related meetings called from time to time by Owner or Owner's Representative.

**ARTICLE IX.**

**WORK CHANGES AND DELAYS**

## 9.1 CHANGES IN THE WORK

- A. Work Subject to Change. The Scope of Work shall be subject to change by additions, deletions, reductions or revisions thereto by Owner or Owner's Representative. Contractor will be notified of such changes by receipt of additional and/or revised Drawings, Specifications, exhibits or written orders. Owner reserves the right to ask for bids from others on any and all changes in the Work involving additions or alterations thereto and/or to award said Work to others.
- B. Adjustments Required by Contractor. Contractor shall submit to Owner or Owner's Representative within ten (10) working days after receipt of notice of a change, a detailed take-off with supporting calculations and pricing for the change together with any adjustments in the Schedule required for the performance of the Work as changed. If such detailed take-off and pricing is not submitted within **ten (10) working days**, Contractor shall perform the Work called for by the change at the cost estimated by Owner or Owner's Representative. The pricing shall be itemized as required by Owner or Owner's Representative and shall be in sufficient detail to permit an analysis of all labor, material and equipment utilized, and shall cover all Work involved in the change, whether such Work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. Should a deletion or reduction in the Work be ordered, there shall be a corresponding reduction in the Contract Price in an amount to be determined by good faith negotiation between Owner or Owner's Representative and Contractor.
- C. Written Approval Required. Contractor shall not perform changes in the Work until Owner or Owner's Representative has approved in writing the pricing for the change and any adjustment in the Schedule for performance of the Work, except as set forth in this **Article 9.1**. Upon receiving such written approval from Owner or Owner's Representative, Contractor shall diligently perform the change in strict accordance with the Contract.
- D. No Suspension of the Work; Unagreed Pricing; Change Directive. Contractor shall not suspend performance of the Contract during the review and negotiation of any change, except as may be directed by Owner or Owner's Representative pursuant to **Article 9.2, SUSPENSION OF WORK**, hereof. In the event the changed Work must be performed immediately or Owner or Owner's Representative and Contractor are unable to reach agreement for pricing of a change or time for performance of the changed Work, Owner or Owner's Representative may issue a change directive in writing directing Contractor to perform the changed Work in the requested time frame. Upon receipt of the change directive, Contractor shall immediately commence performance of the changed Work and alert Owner and/or Owner's Representative of any dispute regarding the pricing for the changed Work or time of performance. If such dispute cannot be immediately resolved, Contractor shall comply with **Article 10.2, CLAIMS**, but in no event shall Contractor ever be entitled to receive more than the amount originally stated in Contractor's take-off pursuant to **Article 9.1-B**.
- E. No Oral Changes; Waiver. Contractor shall not comply with oral changes in the Work. If Contractor believes that any oral notice or instruction received from Owner or Owner's Representative will involve a change in the cost, time to perform or integrity of the Work, it shall require that the notice or instruction be given in writing and shall comply with the provisions of **Articles 9.1-B, C, and D** above. Any costs incurred by Contractor to perform oral changes shall be for Contractor's account, and Contractor waives any and all rights to claim from Owner for such costs or additional time to perform the Work as a result of compliance by Contractor with such oral changes.
- F. Change Forms. Requests for changes shall be submitted in form acceptable to Owner or Owner's Representative.

## 9.2 SUSPENSION OF WORK

- A. Suspension of Work; Notice. Owner may at any time, and from time to time, by written or telegraphic notice to Contractor, suspend further performance of all or any portion of the Work by Contractor. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Such suspensions shall not exceed **one hundred eighty (180) consecutive calendar days** each nor aggregate more than **two hundred seventy (270) calendar days**. Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies, and equipment Contractor has on hand for performance of the Work.
- B. Outstanding Orders and Subcontracts. Upon the request of Owner or Owner's Representative, Contractor shall promptly deliver to Owner copies of outstanding purchase orders and subcontracts of Contractor for materials, equipment and service for the Work, and shall take such action relative to such purchase orders and subcontracts as may be directed by Owner or Owner's Representative. Contractor shall use its best efforts to utilize the material, labor and equipment in such a manner as to mitigate costs associated with suspension.
- C. Withdrawal of Suspension. Owner may at any time withdraw the suspension of performance of the Work as to all or part of the suspended Work by written or telegraphic notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Work for which the suspension is withdrawn on the specified effective date of withdrawal.
- D. Modification of Contract Price or Time of Completion. If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract Price or time of completion, Contractor shall comply with the provisions of the procedure set forth in **Article 10.2, CLAIMS**, hereof. Contractor shall not be entitled to any prospective profits or any damages because of such suspension or withdrawals of suspension.

## 9.3 DELAYS; EXTENSION OF TIME

- A. Delays Due to Force Majeure. In the event Contractor or Owner is delayed in performing any of their respective obligations in the Contract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay shall be excused and the period of such delay shall be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligation is expressly stated in the Contract to be guaranteed. Contractor acknowledges, however, that it is familiar with the general weather conditions, and seasonal changes thereof, at the Site and that no delays shall be excused on account of the occurrence of such seasonal weather, and Contractor has budgeted for such contingencies in the timing of its Schedule pursuant to **Article VIII, TIMING AND COMPLETION OF WORK**, hereof.
- B. Notices Required. In the event any such delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. Contractor shall, within **five (5) working days** after the commencement of any such delay, give to Owner or Owner's Representative written notice of such commencement and of the anticipated results thereof. Within **two (2) working days** after the termination of any such delay, Contractor shall file a written notice with Owner or Owner's Representative specifying the actual duration of the delay. Failure of Contractor to give such written notices within said time periods shall constitute a waiver by Contractor of any claim of any kind arising out of or related to any such delay.

- C. Duty to Shorten or Avoid Delay. In the event of a delay due to the foregoing causes or events, whether such delay is excused or not, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay.
- D. No Additional Compensation. Contractor shall not in any event be entitled to additional or extra compensation by reason of Contractor having been delayed in performance of its obligations due to the foregoing causes or events, whether such delay was excused or not.
- E. Effect on Time of Performance. If Owner or Owner's Representative determines that the delay was beyond the control and without the fault or negligence of Contractor and not foreseeable by Contractor at the Effective Date of the Contract, Owner or Owner's Representative shall determine the duration of the delay and shall extend the time of performance of the Contract thereby to the extent necessary to adjust the schedule for the delay directly resulting from the event, but no such extension shall exceed the total delay encountered taking into account Contractor's ability to reschedule activities to minimize or eliminate delays in the Final Completion of the Work notwithstanding delays to certain portions of the Work, or be granted unless written notice of such event is given to Owner or Owner's Representative as provided above, and a written claim for such extension is given to Owner or Owner's Representative within **ten (10) working days** after the termination of such event.
- F. Waiver of Damages for Delays. Contractor shall not be entitled to, and hereby expressly waives recovery of, any compensation or damages of any kind incurred or suffered by reason of the delays contemplated by this **Article 9.3**, and an extension of time shall constitute Contractor's sole remedy for such delays. Also, Owner's sole liability and Contractor's sole remedy under the Contract for delays caused by Owner or any of Owner's other contractors, consultants, representatives or their agents or employees shall be an extension of time as provided in this **Article 9.3**.

## ARTICLE X.

### TERMINATION; CLAIMS

#### 10.1 TERMINATION AT OWNER'S OPTION

- A. Right to Termination; Notice to Contractor. Owner shall have the right at any time, with or without cause, to terminate this Agreement or the Work under any Order by written or telegraphic notice to Contractor specifying the date of termination. On the date of such termination stated in said notice, Contractor shall discontinue performance of the terminated Work and shall preserve and protect tools, construction equipment and facilities on the Jobsite, materials and plant equipment purchased for or committed to such terminated Work (whether delivered to the Jobsite or on order), Work in progress and completed Work (whether at the Jobsite or other locations) pending Owner's instructions and, if requested by it, shall turn over the same to Owner, including title to said materials and plant equipment, or dispose of same in accordance with Owner's instructions.
- B. Outstanding Orders and Subcontracts. Upon receipt of said notice, Contractor shall advise Owner or Owner's Representative of its outstanding orders and subcontracts pertaining to performance of the terminated Work and, upon request, furnish Owner or Owner's Representative with complete copies. Contractor shall place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not terminated; Contractor shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Owner, of all orders and subcontracts to the extent they relate to the performance of the Work terminated; or, as directed by Owner or Owner's Representative, shall assign to it in form satisfactory to Owner such of its subcontracts and orders

as are designated by Owner or Owner's Representative, or shall take such other action relative to such subcontracts or orders as may be directed by Owner.

- C. Waiver of Claims for Damages; Remedies. Upon any termination pursuant to this **Article 10.1**, Contractor agrees to waive and release any claims for damages, including without limitation loss of anticipated profits, on account of such termination. If Contractor has fully and completely performed all obligations under the Order up to the date of termination, Contractor shall recover from Owner as complete and full settlement for such termination for the Work to be performed under the Order, the actual costs of all such Work satisfactorily completed to the date of termination, plus an allowance for reasonable overhead and profit on such costs (but not to exceed a prorated portion of such Contract Price for such Work based on the percentage of the Work properly completed to the date of termination), together with reasonable costs occasioned by such termination and not previously paid for, less such sums as Contractor has already received on account of the Work performed. In no event shall total payment to Contractor exceed the Contract Price. In no event shall any payment be made for anticipatory profit, underutilization of personnel or equipment, or items of consequential loss or damage. Owner shall not pay, or cause to be paid, any amounts due hereunder except upon receipt of documentation reasonably satisfactory to it with respect to amounts claimed by Contractor.

## 10.2 CLAIMS

- A. Procedures for Contractor Claims. Subject to the provisions of **Article 9.1, CHANGES IN THE WORK**, hereof, Contractor shall give Owner or Owner's Representative written notice within **five (5) working days** after the happening of any event which Contractor believes may give rise to a Claim by Contractor for an increase in the Contract Price or in the scheduled time for performance or any other relief with respect to the terms of the Contract. Within **ten (10) working days** after the happening of such event, Contractor shall supply Owner or Owner's Representative with a statement supporting Contractor's Claim, which statement shall include Contractor's detailed estimate of the change in Contract Price and/or scheduled time occasioned thereby, and specifying in detail the reasons for (including specific references to the relevant contractual provision(s) upon which said Claim is based other than this **Article 10.2**) and the circumstances requiring the adjustment requested in the Claim necessitated by said condition or event. Contractor shall substantiate its Claim with payroll documents, paid invoices, receipts, records of performance and other documents satisfactory to Owner or Owner's Representative and subject to its verification.
- B. Claims Not Reported in Accordance with this Article. Owner shall not be liable for, and Contractor hereby waives, any Claim or potential Claim of Contractor which was not reported by Contractor in accordance with the provisions of this **Article 10.2**. Owner shall not be bound to any adjustments in the Contract Price or scheduled time for Contractor's Claim unless expressly agreed to by Owner in writing.
- C. Continuing Duty to Complete Work. The parties shall negotiate in good faith to reach an agreement, but in no case, except with Owner's prior written consent, shall any of the Work be halted pending such agreement, whether or not the Claim can be resolved to Contractor's satisfaction, and Contractor shall be bound by the terms and conditions of the Contract to prosecute the Work without delay to its successful completion.
- D. No Claims After Final Payment. No Claim hereunder by Contractor shall be allowed if asserted after final payment under the Contract. Contractor's remedies are limited to those expressly set forth in the Contract.

## ARTICLE XI.

### PAYMENT TERMS

#### 11.1 PAYMENTS AND SUBMISSION OF APPLICATIONS FOR PAYMENT

- A. Progress Payments. Except to the extent expressly stated otherwise in an applicable Order, the Contract Price shall be payable pursuant to the Schedule of Values agreed to by Owner and Contractor and will be paid **thirty (30) calendar days** after receipt and approval by Owner or Owner's Representative of a proper application for payment (invoice). Each progress payment shall be for the value of the Work completed by Contractor, as determined by the Schedule of Values in accordance with the terms of the Contract and approved by Owner or Owner's Representative, as of the working day nearest the mutually agreed cutoff date, less the **ten percent (10%)** Retainage provided herein, unless otherwise stated in the Order. Unless otherwise stated in the Order, Retainage shall be withheld from each application for payment until the Work is fifty percent (50%) complete and no further Retainage shall be withheld thereafter.
- B. Submission of Applications for Payment by Contractor. Contractor shall submit separate applications for payment to Owner or Owner's Representative monthly within **five (5) calendar days** after the designated cutoff date as follows:
- (i) Progress applications for payment, for progress payments for the Work (including additional Work authorized in writing by Owner or Owner's Representative and added by a formal change order to the Contract) completed by Contractor during each progress billing period. The cutoff date for Contractor's progress application for payment shall be consistent from month to month. Payment shall not be construed to be an acceptance of the Work.
  - (ii) Additional work applications for payment as separate applications for payment, to cover additional Work authorized by Owner or Owner's Representative and completed by Contractor, but not added to the Contract by a formal change at the time of invoicing. Such applications for payment are subject to the Retainage.
  - (iii) The final and/or retention application for payment shall be submitted for final payment after completion and acceptance of the Work by Owner and compliance by Contractor with all terms of the Contract. This application for payment shall contain a complete itemized listing of progress and additional work invoices by number, date, gross amount, retention amount, and the total amount of sums retained and due and shall be accompanied by an accounting breakdown in the form to be specified by and acceptable to Owner. It shall also contain, or be supported by a written acceptance of the Work signed by Owner and a certification and release in accordance with **Article 11.3, FINAL PAYMENT, CERTIFICATION AND RELEASE.** Unless otherwise required by applicable law, final payment shall not be made less than **thirty-five (35) calendar days** after completion and acceptance of all Work; and in any event, shall not be sooner than **thirty (30) calendar days** after receipt of a proper application for payment and supporting documents satisfactory to Owner. Final payment shall not relieve Contractor of any obligation under the Contract guarantees.
- C. Additional Reports Required. Contractor shall report to Owner the percentage of work, materials, equipment, and services supplied by, and the total numbers of Minority-Owned Business Enterprises, Woman-Owned Business Enterprises, and Local-Owned Business Enterprises used in the performance of the Work, together with a copy of certificates from either the state of the Minority-Owned, Woman-Owned, or Local-Owned Business Enterprise's domicile, the Minority Business Council, the Small Business Administration or such other certifying organization;



showing that each such contractor is, in fact a Minority-Owned Business Enterprise, Woman-Owned Business Enterprise, or Local-Owned Business Enterprise. Contractor shall also submit a written release on the form provided in **Exhibit E** hereof in order to obtain a progress payment.

## 11.2 APPLICATIONS FOR PAYMENT AND SUPPORTING DOCUMENTATION

- A. Form of Applications for Payment and Supporting Documentation. Contractor shall prepare all applications for payment in a form satisfactory to and approved by Owner. In the event an application for payment is submitted in accordance with Contract terms for the Work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. Any application for payment submitted which fails to comply with the terms of the Contract, including the requirements of form and documentation may be returned to Contractor. Any costs associated with the resubmission of a proper application for payment shall be to Contractor's account.
- B. Evidence of Labor, Materials, and Equipment Used. With each application for payment submitted, Contractor shall furnish evidence, satisfactory to Owner or Owner's Representative, that all labor and materials furnished and equipment used during the period covered by any progress application for payment or additional work application for payment have been paid for in full and that the Work is not subject to liens or claims on account thereof. Owner may withhold payment of applications for payment until Contractor furnishes such evidence.
- C. Substantiation of Unit Price. Where Contractor's application for payment includes compensation for the Work performed at a unit price, Contractor shall submit its determination of units of the Work performed, determined in accordance with the provisions of the applicable Order, and substantiated by documents satisfactory in form and content to Owner or Owner's Representative. Upon verification by Owner or Owner's Representative of said documents, Owner or Owner's Representative will advise Contractor in writing of either acceptance of Contractor's determination of units or of Owner's or Owner's Representative's determination of such units. If Contractor believes that Owner or Owner's Representative has incorrectly determined the units of the Work performed, Contractor shall comply with the provisions of **Article 10.2, CLAIMS**, hereof.
- D. Compensation for Reimbursable Contract Price. Where Contractor's application for payment includes compensation for the Work performed for a reimbursable Contract Price, all costs, expenses and other amounts so invoiced shall be substantiated and supported by equipment time slips, paid invoices, time sheets, receipts and other documents satisfactory to and verified by Owner or Owner's Representative.

## 11.3 FINAL PAYMENT, CERTIFICATION AND RELEASE

Upon Contractor's satisfaction of the requirements for Final Completion pursuant to **Article 8.6, NOTICE OF COMPLETION AND FINAL ACCEPTANCE**, Owner shall, following Owner's delivering a Notice of Acceptance to Contractor, make the final payment to Contractor. The final payment shall be equal to (i) one hundred percent (100%) of the sums retained by Owner from the Contract Price, to the extent not previously released in accordance with the applicable Order, plus (ii) the undisputed unpaid portion of the Contract Price, without duplication, less (iii) any sums that may be necessary to settle any outstanding Claims which may be for the account of Contractor, including any Claims Subcontractors or Owner may have against Contractor, provided that Contractor shall have submitted to Owner or Owner's Representative not less than **ten (10) days** prior thereto and as a condition precedent thereto:

- A. an affidavit in form and substance satisfactory to Owner or Owner's Representative that all payrolls, Subcontractors, Sub-subcontractors, Suppliers and materialmen and any other indebtedness relating to the Work have been paid in full or otherwise satisfied other than those Subcontractors, Sub-subcontractors, Suppliers and materialmen (a) which are to be paid in full out

of the proceeds of such final payment subject to Owner's right to pay such Subcontractors, Sub-subcontractors, Suppliers and materialmen out of such proceeds directly or (b) for which Owner has withheld funds to settle Claims pursuant to the above, and Contractor has provided such forms of security as may be acceptable to Owner or cash equivalent in lieu thereof; and

- B. releases of all Claims against Owner arising out of or by virtue hereof (other than Claims for disputed matters solely between Owner and Contractor for which Contractor has given prior written notice in accordance with the Contract to Owner, provided that Contractor has released Owner from all other Claims arising out of or by virtue hereof) in such form and substance and from such persons as may be requested by Owner or Owner's Representative in the form set forth on **Exhibit F**.

#### **11.4 PAYMENTS WITHHELD**

Owner may withhold payment of the whole or any part of a verified or approved application for payment to such an extent as may be necessary to protect itself from loss on account of any of the following causes discovered subsequent to its verification or approvals:

- A. Defective Work not remedied.
- B. Evidence indicating probable filing of claims by other parties against Contractor.
- C. Failure of Contractor to promptly make payments to Subcontractors, Sub-subcontractors and Suppliers or for materials, labor, services, and supplies.
- D. Damage to another contractor under a separate contract with Owner.
- E. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.
- F. Reasonable evidence that the Work cannot be completed within the agreed upon time, and the unpaid balance would not be adequate to cover actual damages for anticipated delay.
- G. Failure to carry out the Work in accordance with the Contract Documents.

When the above issues have been resolved to Owner's satisfaction, applications for payments will then be verified and/or approved for each respective amount not previously verified and approved because of each respective issue.

No payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner, shall be an acceptance of any of the Work not in accordance with the Contract.

#### **11.5 RIGHT TO OFFSET**

Owner, without waiver or limitation of any rights or remedies of Owner, shall be entitled from time to time to deduct from any amounts due Contractor by Owner in connection with the Contract (or any other contract with Owner), any and all amounts owed by Contractor to Owner in connection with the Contract and any other contract between Owner and Contractor.

#### **11.6 MAINTENANCE OF RECORDS; RIGHT TO AUDIT; COST QUESTIONNAIRE**

- A. Maintenance of Records. Contractor shall maintain for a period of **two (2) years** after final payment under the applicable Order, all records and accounts pertaining to the Work performed

by Contractor under the Contract for a unit price, a reimbursable price, or otherwise authorized in writing by Owner for performance on a reimbursable basis.

- B. Owner Right to Audit. Owner or Owner's Representative shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work and for one (1) year after expiration of the Correction Period for the purpose of verifying units furnished and/or costs incurred, as applicable. Contractor shall keep proper records and books in accordance with generally accepted accounting principles consistently applied. Such permitted audit will not be limited in scope to Contractor's direct costs, and Owner or Owner's Representative shall be entitled to review Contractor's indirect costs and other standard rates or percentages Contractor normally charges its clients.
- C. Cost Questionnaire. If requested by Owner or Owner's Representative, Contractor and its Subcontractors, Sub-subcontractors and Suppliers shall provide all requested responses to a cost questionnaire, including, without limitation, reporting total installed cost and cost increases and decreases.

## 11.7 LIENS

- A. Waiver and Release of Liens. To the full extent permitted by applicable law, Contractor hereby waives and releases any and all rights of mechanic's lien, materialmen's lien, laborer's lien and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the Work and granted by law to persons supplying materials, equipment, services and other things of value to approve or modify land or structures hereon, which Contractor may have against Owner's premises or property belonging to Owner or its agents. Contractor shall indemnify and save harmless Owner and its employees, agents and assigns from and against all laborers', mechanics' or materialmen's liens, or any other lien, claim (including, without limitation, attorney's fees), charge, or encumbrance, of whatever kind upon the Work, the manufacturing plant, the Site, any property of Owner and/or any monies retained by Owner or due or to become due from Owner to Contractor, arising out of the Work performed by Contractor or by its Suppliers or its Subcontractors and Sub-subcontractors or their suppliers or subcontractors and/or out of materials, services or equipment furnished by Contractor or by its Suppliers, Subcontractors or Sub-subcontractors or any of their respective employees, agents, or vendors or subcontractors under or in connection with the Contract or in connection with the Work and/or the plant.
- B. Contractor to Keep all Property Free and Clear of Liens. Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the Work under the Contract and shall at its expense keep all property belonging to Owner free and clear of any and all of the above-mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, materialmen, Suppliers, Subcontractors or Sub-subcontractors in the performance of the Work. If Contractor fails to release and discharge any such claim of lien against Owner's premises or the property of Owner arising out of performance of the Work within **five (5) working days** after receipt of written notice from Owner or Owner's Representative to remove such claim of lien, Owner may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Owner any and all costs and expenses of Owner in so doing, including reasonable attorney's fees incurred by Owner.

## ARTICLE XII.

### INDEMNITY, INSURANCE AND BONDS

#### 12.1 CONTRACTOR INDEMNITY

- A. Contractor agrees to indemnify, defend and hold harmless Owner or any of Owner's affiliated companies, and all of their respective directors, officers, employees, agents, representatives, servants, successors and assigns, from and against all actions, causes of action, claims, administrative proceedings, and demands (collectively, "Demands"), and all losses, liabilities, judgments, decrees, fines, penalties, damages, obligations, expenses, amounts paid in settlement and investigation and costs and charges of any kind, including but not limited to, all fees relating to Contractor's failure to promptly undertake and diligently pursue to completion all actions, and also all attorney's fees and investigation fees (collectively, "Costs"), relating in any way whatsoever to, or arising from, either directly or indirectly, the performance by Contractor of its Work and/or the acts or omissions of Contractor or its Subcontractors, Sub-subcontractors, affiliates or Suppliers under the Contract, including, but not limited to, those arising from:
- (1) any Demands by any party, including but not limited to Owner, or its representatives or agents, or contractors hired by Owner, or its representatives or agents, Subcontractors, Sub-subcontractors or employees of Contractor, or governmental authorities involving any actual or asserted (i) breach by Contractor, its Subcontractors, Sub-subcontractors or Suppliers of any of its warranties or representations under the Contract, (ii) failure of Contractor, its Subcontractors, Sub-subcontractors or Suppliers to perform any obligation under the Contract, including without limitation, the provisions of **Article 6.2-D**, or (iii) failure by Contractor, its Subcontractors, Sub-subcontractors or Suppliers or any of its affiliates to comply with any law, statute, code, ordinance, regulation, rule, or order of any governmental or quasi-governmental body, in the performance of its Work under the Contract, including but not limited to any such claims involving any actual or asserted failure of Contractor, its Subcontractors, Sub-subcontractors or Suppliers to comply with any Environmental Requirements; or
  - (2) the payment of all taxes and assessments including penalties and punitive damages, which are or may be required in any contract present or future, state or federal law or laws, upon or in respect to all salaries, wages or other compensation of all persons employed by Contractor, Subcontractor and the Sub-subcontractors on or in connection with the performance of any work covered by the Contract, and to execute and deliver such other and further instruments, and to comply with such requirements of said laws, as may be necessary thereunder to confirm and effectuate the Contract.
  - (3) any actual or asserted infringement or improper appropriation or use by Owner or Contractor or its affiliates of trade secrets, proprietary information, know-how, copyright rights (both statutory and nonstatutory) or patented or unpatented inventions, or for actual or alleged unauthorized imitation of the work of others, arising out of the use or sale of materials, equipment, methods, processes, designs, information, or other things (including construction methods, construction equipment, and temporary construction facilities) furnished by Contractor or its Subcontractors, Sub-subcontractors or Suppliers in or for performance of the Work; or
  - (4) any Demands or Costs on account of (i) injury to or death of persons (including without limitation the employees of Owner or its agents, and the employees of Contractor, Subcontractors, Sub-subcontractors and Contractor's affiliates and suppliers) or (ii) damages to or loss of property (including without limitation the property of Owner or its agents) arising directly or indirectly out of the Contract, including without limitation, any

claims or costs arising under non-delegable duties of Owner or those arising from the use or operation by Contractor, or its Subcontractors, Sub-subcontractors or suppliers of any construction equipment, tools, scaffolding, facilities, or Hazardous Material furnished to Contractor by Owner or its agents to perform the Work; or

- (5) without limiting the effect of **Articles 12.1-A(1) or (3)** above, any Demands or Costs relating in any manner whatsoever to, or arising from, either directly or indirectly, any actual or alleged release or threat of release of any Hazardous Material into the outdoor or indoor environment, or public or private nuisance, in connection with the Work, including the acts or omissions of Contractor, its Subcontractors, Sub-subcontractors, affiliates or Suppliers in the performance of the Work; or
  - (6) the negligence or willful misconduct of Contractor, its Subcontractors, Sub-subcontractors, Suppliers or Contractor's affiliates in performing the Work; or
  - (7) any unfair labor practice charges asserted by any employees or agents of Contractor, its Subcontractors, Sub-subcontractors or Suppliers; or
  - (8) any claims pursuant to the Fair Labor Standards Act for wage and/or hour violations asserted by employees or agents of Contractor, its Subcontractors, Sub-subcontractors or Suppliers; or
  - (9) any claims of discrimination of any sort against Owner or its agents by employees or agents of Contractor, its Subcontractors, Sub-subcontractors or Suppliers; or
  - (10) any claims for defamation, invasion of privacy or interference with contractual relations asserted against Owner or its agents by the agents or employees of Contractor, its Subcontractors, Sub-subcontractors or Suppliers; or
  - (11) any claims for worker's compensation asserted by the agents or employees of Contractor, its Subcontractors, Sub-subcontractors or Suppliers.
- B. Contractor's indemnification obligations under **Article 12.1-A** shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, except where the injury or death of persons or damage to or loss of property was caused solely by the gross negligence or willful misconduct of the party to be indemnified, and shall include any expenses and attorney's fees incurred by Owner for legal action to enforce Contractor's indemnification obligations under this **Article 12.1**. The indemnification obligation under this article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits paid by or for Contractor for any Subcontractor or Sub-subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.
- C. In addition, Contractor shall indemnify the Architect/Engineer and Construction Manager (if any) for all of the Architect/Engineer's and/or Construction Manager's damages and liabilities arising from the performance by Contractor, its Subcontractors and Sub-subcontractors of the Work or the acts or omissions of Contractor, its Subcontractors and Sub-subcontractors under the Contract to the extent such damages and/or liabilities are the fault of Contractor, its Subcontractors or Sub-subcontractors and to the extent the fault of Contractor, or its Subcontractors or Sub-subcontractors exceeds the fault of the party to be indemnified.
- D. The obligations of Contractor under this **Article 12.1** shall survive the termination of the Contract.
- E. With respect to Contractor's indemnity obligations set forth in **Article 12.1-A**, Owner shall have the right to participate in the defense of, or at its option to assume the defense of, any action,

suit, proceeding, demand, assessment or judgment brought by any party against Owner, its representatives or agents, the affiliated companies, and all of their respective directors, officers, employees, agents, representatives, successors or assigns without releasing any of Contractor's obligations pursuant to this **Article 12.1**.

## 12.2 INSURANCE

### A. Property Insurance provided by Owner.

- (1) Owner shall purchase and maintain, during the course of construction, property insurance upon the entire Work at the Site and Owner's existing facility. This insurance shall include the interests of Owner, Contractor and the Subcontractors to whatever tier in the Work. Such coverage will also extend to materials and equipment intended to become a portion of the Work including while such materials and equipment are stored off the Project Site or while in inland transit. Contractor and the Subcontractors of whatever tier must provide "wet marine" or other appropriate insurance coverage on their materials and equipment if transported from overseas.
- (2) Contractor and the Subcontractors to whatever tier are solely responsible for loss or damage to their tools and equipment and the insurance provided by Owner will not extend to such loss or damage.
- (3) Any loss insured by coverage purchased and maintained by Owner will be adjusted with Owner and made payable to Owner for the insureds as their interests may appear.
- (4) Owner and Contractor hereby waive all rights against each other, the Construction Manager (if any) and the Architect/Engineer and Subcontractors to whatever tier of each other, for loss or damage to the Work or the Project to the extent covered by the property insurance maintained by Owner as noted above except to the extent covered by Professional Liability Insurance. Notwithstanding the foregoing, Contractor will be responsible for prompt payment to Owner of the first \$25,000 for each incident of any loss or damage to the Work, materials, equipment or Owner's existing facilities caused in whole or in part by Contractor and its Subcontractors to whatever tier. Determination of responsibility for loss or damage will be solely at the discretion of Owner.
- (5) Unless otherwise agreed by Owner, the Contractor shall include in each subcontract and purchase order it enters into provisions and insurance requirements not less favorable to Owner than those contained in this **Article 12.2** except that the umbrella / excess liability insurance may have a limit of \$5,000,000.00 and the Professional Liability Insurance may have a limit of \$4,000,000.00.

### B. Contractor Furnished Insurance

- (1) Without limiting any of the other obligations or liabilities of the Contractor under the Contract, Contractor will at all times until all its obligations hereunder have been fully discharged, carry and continuously maintain at its own expense, or cause to be carried and continuously maintained, at least the minimum insurance coverage set forth in this **Article 12.2**, in each case with insurance companies of recognized responsibility, and with terms and conditions acceptable to Owner.
- (2) Insurance carried in accordance with this **Article 12.2** shall, to the extent of the indemnities set forth in **Article 12.1**, be endorsed to provide that Owner, its Construction Manager (if any) and its Architect/Engineer shall be included as an additional insured using additional insured endorsement ISO Form 20 10 11 85 or its

equivalent (except with regard to worker's compensation and professional liability) with the understanding that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of Contractor and not that of Owner. Inasmuch as such insurance is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exceptions of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured except with regard to the limits stated in **Article 12.2 (B)(4)**. Within ten (10) days of Owner's request thereof, Contractor shall provide to Owner a certified full copy of each policy of insurance, together with all endorsements, that Contractor is required to have pursuant to the Contract.

- (3) With respect to all insurance maintained by Contractor pursuant to the Contract, (A) the interests of Owner and Contractor shall not be invalidated by any action or inaction of any other person or entity, and Contractor, Owner, its Construction Manager (if any) and its Architect/Engineer shall be insured regardless of any breach or violation by the Contractor or any other person or entity of any warranties, declarations or conditions contained in such policies; and should such policies in fact not be in effect because of such breach or violation, then Contractor shall reimburse Owner for such amounts as Owner and its Architect/Engineer would have received had such insurance been in effect; (B) all deductibles shall be in amounts acceptable to Owner but shall be paid by Contractor; (C) the insurers thereunder shall waive all rights of subrogation against Contractor, Owner, Construction Manager (if any) and its Architect/Engineer, any right of set-off and counterclaim and any other right to deduction whether by attachment or otherwise; (D) such insurance shall be primary without right of contribution of any other insurance or self-insurance carried by or on behalf of Contractor or Owner, Construction Manager (if any) and its Architect/Engineer with respect to their interest in the Work and the Project; and (E) if such insurance is cancelled by the insurer for any reason whatsoever (including nonpayment of premium) or any substantial change is made in the coverage that affects the interests of Contractor and Owner, Construction Manager (if any) and its Architect/Engineer, such insurance shall nonetheless remain effective for thirty (30) days after receipt of written notice to Owner sent by registered mail from such insurer of such cancellation or change.
- (4) During the life of the Contract and for such additional time as may be required, Contractor will provide, pay for, and maintain the insurance outlined below covering Contractor's activities and those of any of the Subcontractors to whatever tier.
- (a) Workers' Compensation and Employer's Liability:
- Workers' compensation insurance in accordance with applicable law providing statutory limits of coverage
- Employer's liability insurance with a minimum limit of liability of \$1,000,000 for each occurrence
- (b) Commercial General Liability:
- Commercial general liability insurance coverage against claims for personal injury (including bodily injury and death) and property damage (including loss of use with a cap of \$100,000.00). Such insurance will identify Owner as an additional insured, operate as primary insurance with no contribution from any insurance or self-insurance maintained by Owner, and will have these minimum limits and coverage:

- (i) Minimum limits: \$1,000,000 each occurrence  
\$2,000,000 general aggregate  
\$2,000,000 products and completed operations aggregate
- (ii) Coverages:
  - 1) 1986 (or later) ISO commercial general liability form (occurrence form)
  - 2) Products and completed operations coverage maintained for at least 3 years following final acceptance of the Services by Owner
  - 3) Explosion, collapse and underground coverage (included in 1993 ISO form)
  - 4) Blanket contractual liability coverage
  - 5) Sudden and accidental pollution coverage

(c) Automobile Liability:

Business auto liability insurance covering liability arising out of any auto (including owned, hired, and non-owned autos) with a combined single limit of liability of \$2,000,000 per occurrence for bodily injury and property damage. Such insurance will identify Owner as an additional insured and operate as primary insurance with no contribution from any insurance or self-insurance maintained by Owner.

(d) Umbrella/Excess Liability:

Contractor will maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above in subsections (a) for employer's liability, (b) for commercial general liability and sudden and accidental pollution coverage, and (c) for business auto liability. Such insurance will identify Owner as an additional insured, provide blanket contractual liability coverage, and will operate as primary insurance with no contribution as respects any insurance or self-insurance maintained by Owner. Minimum limits of liability will be Twenty Million Dollars (\$20,000,000.00) per occurrence and annual aggregate.

(e) Railroad Protective Liability:

Railroad protective liability insurance when the Work is on or within fifty (50) feet of a railroad or affects any railroad property including but not limited to tracks, bridges, tunnels, and switches. The limit of coverage will not be less than \$3,000,000 each occurrence/\$6,000,000 aggregate.



(f) Professional Liability:

Contractor will purchase and maintain professional liability insurance with a \$5,000,000 limit for each claim and annual aggregate. Coverage will have a retroactive date prior to the beginning of the Work and will have an extended reporting period of thirty-six (36) months after completion and acceptance of the Work by Owner.

(5) Certificates of Insurance:

Before starting the Work, Contractor will give Owner certificates of insurance satisfactory in form to Owner evidencing that the above insurance is in effect and that not less than thirty (30) days advance written notice will be given to Owner prior to any cancellation or restrictive modification of the coverage.

(6) Waiver of Subrogation:

All insurance policies in any way related to the Work and secured and maintained by Contractor will waive all rights of recovery, under subrogation or otherwise, against Owner, its Architect/Engineer and all tiers of contractors or consultants engaged by Owner, except that such insurance policies shall not waive subrogation against such Architect/Engineer nor other tiers of contractors or consultants engaged by Owner to the extent of coverage under their respective professional liability insurance policies. Contractor will require of the Subcontractors to whatever tier, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this article.

(7) Cooperation:

Contractor agrees to fully cooperate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of the insurance required here, in all areas of safety, insurance program administration, claim reporting and investigating, and audit procedures. These obligations also apply to any Owner-controlled insurance that may be purchased by Owner.

### 12.3 CONTRACT BONDS

- A. Bond Requirement. Unless otherwise provided in an applicable Order, Contractor shall furnish when requested by Owner or Owner's Representative a faithful performance bond in an amount equal to 100% of the full amount of the Contract as a guarantee on behalf of Contractor that the terms of the Contract shall be complied with in every particular, and a Contractor's payment bond in an amount equal to 100% of the full amount of the Contract as security for the payment of all persons performing labor or for payment for all materials and equipment used in performance of the Work. Contractor shall obtain the performance and payment bonds from sureties acceptable to Owner or Owner's Representative and on the forms satisfactory and acceptable to Owner.
- B. Duration of Bond. Each such Bond shall remain in effect for the period extending until **two (2) years** after Final Acceptance.

### ARTICLE XIII.

### SUBCONTRACTS

### 13.1 SUBCONTRACTS AND PURCHASE ORDERS

- A. Approved Subcontractors. Contractor shall not subcontract performance of any portion of the Work under the Contract without the prior written consent of Owner. Owner's consent to such subcontractors shall not be unreasonably withheld. Contractor represents and warrants that each Subcontractor performing any portion of the Work pursuant to Owner's written consent shall be fully experienced and properly qualified to perform the Work and all of their respective obligations under the Contract; that it and each of them has the financial and technical capability to satisfy their respective obligations hereunder; that it and each of them are properly licensed, equipped, financed and organized to perform the Work in the State and any other jurisdiction where the performance of the Work will occur. Any Subcontractor not so duly licensed in the State and jurisdiction where the performance of the Work will occur shall not be permitted to perform any portion of the Work under the Contract. If requested by Owner or Owner's Representative, Contractor shall furnish Owner or Owner's Representative a copy of the proposed subcontract (with price deleted if the subcontracted Work is part of fixed price Work of Contractor under the Contract) for Owner's or Owner's Representative's review of the terms and conditions thereof and shall not execute such subcontract until Owner or Owner's Representative has given notice of non-objection to such terms. Failure of Contractor to comply with this **Article 13.1** may be deemed by Owner or Owner's Representative to be a material breach of the Contract. Contractor shall not change a Subcontractor, person or entity previously selected if Owner or Owner's Representative makes a reasonable objection to such change. **A Contractor may not own any interest in a Subcontractor, Sub-subcontractor or Supplier, directly or indirectly, either as a shareholder, partner, member, trustee or any other form of ownership whatsoever, without disclosing such ownership interest to Owner and obtaining Owner's written permission to work with such Subcontractor, Sub-subcontractor or Supplier. The failure to disclose information to Owner regarding such ownership interest held by Contractor in a Subcontractor, Sub-subcontractor or Supplier may be grounds for termination of the Contract, in addition to any other remedy available under law or the Contract.**
- B. Contractor Guarantee of Subcontractor's Work. Contractor guarantees that its Subcontractors and Sub-subcontractors will comply fully with the terms of the Contract applicable to the portion of the Work performed by them. If any portion of the Work which has been subcontracted by Contractor is not prosecuted in accordance with the Contract, on request of Owner or Owner's Representative, the Subcontractor or Sub-subcontractor shall be replaced at no additional cost to Owner and shall not be employed again on the Work.
- C. Owner Right to Contact Subcontractors and Sub-subcontractors. Owner and Owner's Representative shall have the right from time to time to contact Contractor's Subcontractors and Sub-subcontractors to discuss their progress.
- D. Includes Purchase Orders, etc. As used in this Article, the term "subcontract" shall include purchase orders of the general types designated from time to time by Owner or Owner's Representative in advance for materials or equipment for the Work, and the term "Subcontractor" shall include vendors of such material or equipment.
- E. Quarterly MBE/WBE Statement. On or before the tenth (10<sup>th</sup>) day of each March, June, September and December during the term of the Contract, Contractor shall provide Owner or Owner's Representative a statement, broken down by each Subcontractor and Sub-Subcontractor, of the sums paid the prior quarter to each MBE/WBE working on the Project for Contractor.
- F. Other Responsibilities of Contractor with Respect to Subcontract. In addition to other responsibilities included in the Contract, and notwithstanding the foregoing, Contractor shall not subcontract the whole of the Work, and notwithstanding any consent given by Owner or Owner's Representative to the use of a Subcontractor, no such approval of or consent to Subcontractors

shall relieve Contractor from any liability or obligation under the Contract and Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, its agents, servants or workmen as fully as if they were the acts, defaults or neglects of Contractor, its agents, servants or workmen. Contractor shall ensure that its Subcontractors, Sub-subcontractors and Suppliers comply with the provisions of the Contract, insofar as they apply to the subcontracted Work or to the goods and materials to be supplied. The supply contracts and subcontracts shall also expressly provide that they may be assigned to Owner or its affiliate without the prior consent of the Supplier or Subcontractor. All references herein to duties and obligations of Contractor shall be deemed to pertain also to all Subcontractors, Sub-subcontractors and Suppliers, to the extent applicable. Contractor shall be obligated to ensure that all its Subcontractors, Sub-subcontractors and Suppliers comply with such requirements. Nothing contained in the Contract shall create any contractual relationship between any Subcontractor, Sub-subcontractor or Supplier and Owner.

### 13.2 DAMAGE TO OTHER CONTRACTORS

If Contractor or any of its Subcontractors, Sub-subcontractors or Suppliers cause any loss or damage to any separate contractor with a prior, concurrent, or subsequent contract on the Work or on the Site, or any undue delay to such separate contractor on the Work or on the Site, and if such contractor makes a claim against Owner, on account of any loss so sustained, Owner shall notify Contractor who shall indemnify and save harmless Owner against any expenses arising therefrom. Contractor's obligation to indemnify and save harmless Owner against any damages or costs arising from claims of other contractors shall be in addition to liquidated damages, if any, described in the applicable Order.

### 13.3 SEPARATE CONTRACTS

- A. Other Owner Contracts. Owner may award other contracts for additional new construction, buildings or equipment or for reconstruction, alteration, replacement to or addition of equipment, and improvement of existing buildings on the Site, and Contractor shall fully cooperate in the storage of materials and the detailed execution of the Work, coordinate and integrate his operations with such other contractors, and carefully fit his own Work to that provided under other contracts, as he may be directed by Owner or Owner's Representative. Contractor shall not commit or permit any act which will interfere with the performance of the work of any other contractor.
- B. Supervision of Other Contractors. Contractor, including its Subcontractors, Sub-subcontractors and Suppliers shall keep itself informed of the progress and the detail work of other contractors and shall notify Owner or Owner's Representative immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with his own operations of the Work.

### 13.4 RELATIONSHIP OF CONTRACTOR AND SUBCONTRACTORS

- A. Subcontract Provisions. Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work, to bind Subcontractors, Sub-subcontractors and Suppliers to Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors, Sub-subcontractors and Suppliers and to give Contractor the same power with respect to terminating any subcontract that Owner may exercise over Contractor under any provisions of the Contract Documents. Contractor shall require all Subcontractors, Sub-subcontractors and Suppliers to be bound by the Contract Documents.
- B. Specifications. The articles, divisions, sections, or paragraphs of the Specifications are not intended to control Contractor in dividing the Work among Subcontractors or to limit the work performed by any trade.

- C. Coordination of Subcontracts. Contractor shall be responsible for the coordination of Subcontractors, Sub-subcontractors, Suppliers, the trade contractors, and materialmen engaged upon his/her Work. Contractor shall provide Subcontractors and its prospective Sub-subcontractors, manufacturers, material dealers or suppliers with complete information of pertinent contract requirements and all transactions therewith shall be through Contractor.
- D. Specialty Subcontracts. Contractor shall, without additional expense to Owner, utilize the services of specialty Subcontractors on those parts of the Work which are specified to be performed by specialty Subcontractors.
- E. Disputes between Contractor and Subcontractors. Neither Owner nor the Owner's Representative will undertake to settle any differences between Contractor and its Subcontractors or between Subcontractors and their Sub-subcontractors.

## ARTICLE XIV.

### SAFETY

#### 14.1 SAFETY PLANS AND SAFETY REPRESENTATIVES

- A. Requirement of Written Safety Plan and Safety Representative. All contractors and subcontractors performing the Work at the Jobsite shall have in effect a written safety plan and shall designate a safety representative. In addition, each Contractor shall establish a plan for conducting Job Planning and Safety Analyses (JPSA) before beginning each work task on the Jobsite.
- B. Responsibilities of Safety Representative Contractor's safety representative shall be responsible for initiating the safety program, ensuring that Jobsite safety requirements and procedures are being accomplished, conducting safety inspections of the Work being performed, conducting weekly safety meetings with craft employees and submitting a weekly report to Owner or Owner's Representative documenting safety activities. The safety representative will also be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or accident are controlled and that operating equipment, tools and facilities are used, inspected and maintained as required by applicable safety and health regulations.

#### 14.2 SAFETY MANAGER

If Contractor, its Subcontractors and/or Sub-subcontractors have over fifty (50) employees collectively on the Jobsite, Contractor shall be required to have a full-time safety manager on Site during execution of the Work. It shall be Contractor's responsibility to flow this requirement down to the Subcontractors and Sub-subcontractors. Owner reserves the right to review the qualifications or have Owner's Representative review the qualifications of those proposed to execute the duties of safety manager and approve them.

Safety managers will have functional accountability to Owner's safety manager.

#### 14.3 SAFETY STANDARDS

- A. Owner Policies. Contractor shall, at a minimum, strictly comply with Owner's rules, regulations and policies, and all of Owner's safety and environmental requirements, as amended from time to time.
- B. General Safety Standards. Contractor shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the Work, Contractor shall comply strictly with local, municipal, provincial, state and national laws,

orders, and regulations pertaining to health or safety which are applicable to Contractor or to the Work, including without limitation the Occupational Safety and Health Act of 1970 (84 U.S. Statutes 1590), as amended and any state plans approved thereunder, and regulations thereunder, to the extent applicable, and Contractor warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Contractor in connection with the performance of the Work shall comply therewith. At all times while any of Contractor's employees, agents, Subcontractors, Sub-subcontractors or Suppliers are on Owner's premises, Contractor shall be solely responsible for providing them with a safe place of employment, and Contractor shall inspect the places where its employees, agents, Subcontractors, Sub-subcontractors and/or Suppliers are or may be present on Owner's premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them and notify Owner and Owner's Representative of such conditions. Contractor shall act carefully and shall cause its Subcontractors, Sub-subcontractors, Suppliers and employees to act carefully to avoid the risks of bodily harm to persons or damage to any property. Contractor shall indemnify and save harmless Owner, and its officers, employees and agents, from and against any and all claims, loss or liability in any manner arising out of Contractor's failure to comply with this

**Article 14.**

- C. OSHA Permits and Programs. Contractor shall initiate and maintain such permits and programs as may be necessary to comply with requirements set forth by the Occupational Safety and Health Administration (OSHA) and any other local, state and federal regulations.

#### **14.4 REPORTS; PERMITS; RECORDS**

- A. Reporting of Incidents. Accidents, injuries and illnesses requiring medical attention other than routine first aid, damage to property of Owner, Owner's Representative, Contractor and its Subcontractors and Sub-subcontractors, and fires shall be immediately reported orally to Owner or Owner's Representative at the time of the incident. Written reports, satisfactory in form and content to Owner or Owner's Representative, shall be submitted by Contractor within twenty-four (24) hours after each incident.
- B. Jobsite Reports. Contractor shall maintain, in form and content approved by Owner or Owner's Representative, Jobsite accident, injury and illness statistics which shall be available for inspection by, and submitted to Owner or Owner's Representative upon written request.
- C. Other Reports. Contractor shall simultaneously provide to Owner or Owner's Representative a copy of all reports provided to government agencies or insurance companies relating to any Jobsite accident or injury during Contractor's performance of the Work.
- D. Permits. A copy of all permits shall be provided to Owner or Owner's Representative prior to commencement of the Work at the Jobsite. If OSHA permits are not required to perform the Work, a letter shall be submitted to Owner or Owner's Representative prior to commencement of the Work at the Jobsite certifying that no permits are required.
- E. Records. All safety training records/certifications must be maintained at the Site and available to Owner and Owner's Representative at all times.

#### **14.5 VIOLATIONS; RIGHT TO STOP WORK**

Owner and Owner's Representative shall have the right to stop the Work whenever safety violations are observed which could jeopardize the well being of personnel and equipment. The expense of any such Work stoppage and resulting standby time shall be for Contractor's account. The failure or refusal of

Contractor to correct the observed violation may result in the termination of the Contract, and/or the dismissal from the Jobsite of those responsible for such failure or refusal.

#### 14.6 CONTRACTOR SAFETY TRAINING REQUIREMENTS

- A. Contractor's supervisor and its Subcontractors and Sub-subcontractors' supervisors (foreman and above) on Site must possess a current OSHA Ten Hour Training card indicating they have received the OSHA Ten Hour Training Course within the past two (2) years. Any supervisor that has not received the training, prior to the Contractor, Subcontractor or Sub-subcontractor mobilizing on Site, will not be allowed to perform or act as a supervisor.
- B. STOP Observation. Contractor, its Subcontractors and Sub-subcontractors shall adopt and perform Supervisors Trained in Observation Performance (STOP) daily. Contractor will be required to tabulate the findings and report these findings in the weekly Safety Supervisors Meeting. Contractor will also be required to turn in daily to Owner their STOP Audit Sheets.
- C. Safety Supervisor. Those Contractors with less than fifty employees on Site are allowed to have a supervisor with safety responsibilities. This supervisor must be certified as a Safety Trained Supervisor (STS). For further information regarding STS training requirements, contact the Council on Certification of Health Environmental and Safety Technologists (CCHST) at 208 Burwash Avenue, Savoy, IL 61874, telephone (217) 359-2686.

### ARTICLE XV.

#### ON SITE RULES RELATING TO USE OF PREMISES

##### 15.1 WORK RULES

- A. Security Program. Contractor is responsible for the security of its workers, tools, materials and equipment on (and to and from) the Jobsite. All small tools and construction equipment belonging to Contractor must be clearly identified as such. Tools, including personal tools, are subject to inspection at the security gate on arrival and departure. Also, Contractor must allow inspection access to Owner and Owner's Representative at all times while Contractor is on the Jobsite. Owner makes no representation about the security of the Jobsite and disclaims any and all responsibility for the security of Contractor's, its Subcontractor's and Sub-subcontractor's workers, tools, materials and equipment on (and to and from) the Jobsite.
- B. Joint Occupancy. The roads to the various work sites on the Site will be used jointly by all contractors and Owner.
- C. Construction Area Limits. Owner or Owner's Representative will designate the boundary limits of access roads, parking areas, storage areas, and construction areas. Contractor shall not trespass in or on areas not so designated. Contractor shall be responsible for keeping all of its personnel out of areas not designated for Contractor's use. This includes trailers, work areas or other facilities upon Owner's premises, access to which must be given upon demand. In the case of isolated Work located within such areas, Owner or Owner's Representative will issue permits to specific Contractor personnel to enter and perform the Work.
- D. Temporary Plant Roads Within Contractor's Area. The construction area will be constructed and maintained by Contractor. All roads constructed by Contractor shall be adequate for applied traffic loads and to prevent damage to underground facilities. All temporary roads are to be removed prior to "Final Acceptance," unless Owner or Owner's Representative directs them to be retained.

- E. Restricted Roads Next to Contractor's Area. Roads other than those mentioned above are restricted for reasons of safety. Contractor will not be permitted access or use of these roads. Restricted roads will be defined when construction arrangements are finalized.
- F. Contractor's Office at Site of Work. During the performance of the Contract, at Owner's or Owner's Representative's request, Contractor shall maintain a suitable office at or near the Jobsite which shall be the headquarters of a representative authorized to receive drawings, instructions, or other communication or articles. Any communication given to the said representative, or delivered at Contractor's office at the Jobsite in his absence, shall be deemed to have been delivered to Contractor.
- G. Contractor's Temporary Buildings. All temporary construction buildings shall be fire retardant. The location, size(s), quantity and type(s) of temporary buildings shall be subject to Owner's review and approval or Owner's Representative's review and approval.
- H. Radios On Site. Hand held radios may be permitted. Approval for use of radios shall be obtained through Owner or Owner's Representative. Contractor shall obtain any necessary license to operate radios on the Jobsite. Any such radios shall operate on a separate dedicated frequency.
- I. Personnel Identification. Owner or Owner's Representative shall provide identification badges to all Contractor's employees working either directly or indirectly under its supervision. These badges must be worn conspicuously by these employees at all times when on the Jobsite.
- J. No Smoking. Smoking will not be allowed in the Work area(s) or outside of the designated smoking areas.
- K. Personnel Clothing and Equipment. Contractor's personnel must wear hard hats, safety boots, safety glasses and all other necessary and required safety equipment and clothing.
- L. Dust Control. Contractor, for the duration of the Contract, shall maintain all excavation, embankments, haul roads, plant sites, waste disposal areas, borrow areas, and all other Work areas free from dust, as determined by Owner or Owner's Representative. Industry-accepted methods of dust control suitable for the area involved, such as sprinkling, light bituminous treatment or similar methods, will be permitted. No separate payment will be made for dust control. No chemical treatment or oil application is acceptable.
- M. Explosives. Contractor shall be responsible for the proper handling, transportation, storage and use of explosives and shall, at its expense, make good any damage caused by its handling, transporting, storage and use of explosives.
- N. Signs. No signs, billboards, posters, or any type of advertising matter will be permitted on, about or adjacent to the Site, or on any structure on the Site, except by written permission from Owner or Owner's Representative, and then only with its approval as to location, size, text, design, and other features. Contractor shall maintain same, as approved, in neat and orderly appearance, painted and in good repair.
- O. Drainage. Contractor shall provide proper and adequate drainage for its construction, storage, parking and fabrication areas, including the necessary piping for disposal to Owner's ditches or sewers. Temporary drainage facilities shall be removed upon "Final Acceptance" of the Work unless Owner or Owner's Representative directs to have the facilities left in place. Contractor shall be responsible for providing and operating any temporary pumps for keeping its area drained. Contractor shall furnish and place any necessary surfacing material to avoid loss of time due to muddy conditions.

- P. Lunch Facilities. Contractor shall provide any necessary break areas for their forces. Contractor understands and agrees that all labor employed by it, its agents, and/or Subcontractors and Sub-subcontractors for the Work on the Jobsite are not allowed access to or use of Owner's plant cafeteria. Contractor shall implement such procedures as are necessary to ensure compliance with this rule by its employees, agents, and Subcontractors and/or Sub-subcontractors.
- Q. Construction Entrance. Unless otherwise directed by Owner or Owner's Representative, Owner will provide gatehouse and gateman designated for Contractor's use for ingress and egress to the Jobsite. This gateman will control plant access by Contractor personnel and notify the receiving area when shipments are at the gate. Individual drive-in passes will only be issued to those specifically authorized in accordance with the procedure established by Owner or Owner's Representative. Access to the plant from the perimeter parking lot will be restricted to buses or other authorized vehicles only.
- R. Time Alleys and Timekeepers. Contractor shall provide time alleys and timekeepers as required at the Jobsite to control access of craftsmen to and from the Jobsite.
- S. Removal of Equipment Materials etc. from Jobsite. All equipment, materials, supplies and tools leaving the plant are to be accompanied by a gate pass issued by Owner or Owner's Representative or procedures implemented by Owner or Owner's Representative from time to time. In addition, Contractors shall be required to provide a Property Declaration Form for all equipment and materials being removed from the Jobsite.
- T. Review by Owner. Review and approval by Owner or Owner's Representative of Contractor's rigging, scaffolding and other construction plans shall not constitute or be construed as Owner's assumption of Contractor's responsibility or liability for scaffolding or safety under the Contract or at law and does not relieve Contractor from full compliance with its legal and contractual obligations.
- U. Substance Abuse Policy. All employees working on the Jobsite, including the Subcontractors, Sub-subcontractors and Suppliers to the selected Contractor, shall be required to comply with Owner's substance abuse policy and requirements, as amended from time to time. A current certification of the individual and test results must be presented by each employee prior to the start of Work. Owner requires pre-assignment drug screenings of all employees and agents of the Contractor, Subcontractors, Sub-subcontractors and Suppliers sent to the Site. All employees of the Contractor, Subcontractors, Sub-subcontractors and Suppliers shall be required to present the Negative Drug Screen Report to Site security or the Construction Manager (if any) for initial access to the plant. Employees who cannot present this required report will not be given access privileges. A post accident drug screen shall be required for those persons involved in accidents on Owner's property. Employees and agents of the Contractor, Subcontractors, Sub-subcontractors and Suppliers who are reasonably believed to be under the influence of narcotics or alcohol shall be tested as deemed appropriate by the Contractor project manager or designee. It is the responsibility of the Contractor to implement and maintain a drug free work environment and screening program that complies with Owner's policy and legal considerations and the Contract requirements. Contractor drug screenings must be from one of the drug screening sites designated by Owner. Contractor shall provide Owner or Owner's Representative with an executed copy of Owner's Substance Abuse Policy.
- V. Silicone Contamination Avoidance Agreement. Contractor shall provide Owner or Owner's Representative with an executed copy of Owner's "Silicone Contamination Avoidance Agreement".
- W. Storage. Contractor shall store his apparatus, materials, supplies, and equipment in such orderly fashion at the Jobsite as will not unduly interfere with the progress of its Work or the work of any other contractors.



- X. Sidewalks, etc. Necessary crossings of curbing, sidewalks, roadways or parkways shall be protected against damage, and any damage shall be repaired by or at the expense of Contractor.
- Y. Sanitary Conditions. Contractor shall provide and maintain such sanitary accommodations for the use of its employees and those of its Subcontractors, Sub-subcontractors and Suppliers as may be necessary to comply with the requirements and regulations of the local and State Department of Health and as directed.
- Z. Teamwear. While on-site at the Site, all of the Contractor's employees and representatives shall wear appropriate teamwear or other wear of the Contractor, clearly displaying the Contractor's name and/or logo, such that the employee or representative is clearly identified with the Contractor.
- AA. Loading Structures. Contractor shall neither load nor allow the loading of any structure in a manner that will endanger that structure. Furthermore, Contractor shall not allow the Work or nearby structures to be subjected to stresses or pressures that will damage them.
- BB. Contractor Trailer Space, Laydown and Employee Parking Areas. Owner provides limited Contractor office trailer space, laydown space and employee parking in Owner's Contractor Village. The Contractor Village is remotely located at Gate 12 off of Highway 11, south of the Site. This space is offered on a first come, first serve basis. All trailer space will be issued and controlled by Owner. Guidelines explaining the use and restrictions of trailer city will be issued at the time of assignment. Contractor is responsible for employee transportation to the Jobsite. The personal and company vehicles of Contractor, its subcontractors, and its employees will never be allowed inside the Foreign Trade Zone. The personal and company vehicles of Contractor, its subcontractors, and its employees will never be allowed in Owner's team member parking lots. Contractor badges will be restricted from entering through Owner's team member turnstiles. If these facilities become full, it is the Contractor's responsibility to provide parking and transportation to the Jobsite.

## 15.2 ENVIRONMENTAL PROCEDURES

- A. Water Pollution. Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife. Further, Contractor may not discharge any chemicals into floor drains, sinks, clean-outs or sumps without the prior written approval of Owner's environmental engineering group. There are no exceptions. Vehicles may not be washed anywhere other than in designated areas. Storing of materials outside must be kept to a minimum. If materials must be stored outside, the storage area must be kept neat and clean. All stored materials must be kept in sealed containers and any material which may present a stormwater exposure threat must be stored under cover.
- B. Air Pollution Prevention. Contractor shall perform its Work so as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of the governmental entities having jurisdiction over the Site. Open burning shall not be allowed. Control measures must be taken to minimize fugitive dust, except that oil products shall not be used for roadway dust suppression.
- C. Handling Solid/Hazardous Waste. Contractor shall handle and dispose of all hazardous and non-hazardous waste and debris in accordance with **Exhibit G** and **Exhibit H**.
- D. Miscellaneous Environmental. The liability and cost of any clean up of chemical spills is the responsibility of Contractor. With respect to any environmental instruction, Contractor must respond to Owner's environmental contact. Failure to comply with any environmental

requirement may be grounds for dismissal from the Project. Contractor must undergo environmental orientation and it is Contractor's responsibility to ensure that all of its Subcontractors, Sub-subcontractors and Suppliers and other personnel comply with such rules and regulations. It is Contractor's responsibility to inform all contractors, Subcontractors, Sub-subcontractors and Suppliers and other personnel of these environmental requirements.

- E. Ventilating. Contractor shall:
- (i) Prevent hazardous accumulations of dust, fumes, mists, vapors or gases in areas occupied during construction;
  - (ii) Provide local ventilation to prevent harmful accumulation of hazardous substances into atmosphere of occupied areas;
  - (iii) Dispose of materials in a manner that will not result in harmful exposure to persons or disrupt or otherwise affect operation of existing facilities.
  - (iv) Ventilate storage spaces containing hazardous, volatile or high temperature sensitive materials.
- F. Hazardous Substances. Contractor shall comply with applicable hazardous substance disclosure requirements set forth in **Exhibit G**.
- G. Environmental Plan. Contractor shall comply with the procedures and guidelines set forth in the "Environmental Protection Plan Supplier's Edition", as set forth on **Exhibit G** hereof and any updates or revisions thereto.
- H. SPCC and Best Management Practices Plan. The Spill Prevention, Control and Countermeasures (SPCC) Plan for the Project and the Best Management Practices Plan for the Project are attached hereto as **Exhibit H**. Contractor shall comply with the procedures and requirements set forth in such plans.

### 15.3 CLEANUP

- A. Cleanup Requirements. Contractor shall at all times keep the Jobsite in a neat, clean and safe condition and remove from Owner's premises and the vicinity thereof and properly dispose of all debris and rubbish caused by Contractor's operations. All packing material related to Contractor's Work must be collected and disposed of. Upon completion of the Work, Contractor shall promptly return unused materials furnished by Owner and remove from Owner's premises all of Contractor's equipment, material, scaffolding and like items, leaving Owner's premises and the vicinity clean, safe and ready for use.
- B. Failure to Maintain Work Area. In the event Contractor shall fail to maintain its Work area as described above and in a manner satisfactory to Owner or Owner's Representative, or to effect such cleanup or removal immediately after receipt of written notice to do so, Owner or Owner's Representative shall have the right without further notice to Contractor to perform such cleanup and remove such items on behalf of, at the risk of and at the expense of Contractor. Owner or Owner's Representative may store items removed at a place of its choosing on behalf of Contractor and at Contractor's risk and expense. Owner or Owner's Representative shall promptly notify Contractor of such place of storage. Contractor shall promptly reimburse Owner for the costs of such cleanup, removal and storage.

## **15.4 EMERGENCY PROCEDURES**

Each Contractor is responsible for developing appropriate emergency response procedures and submitting completed plans for such procedures to Owner or Owner's Representative prior to Contractor's mobilization to the Site.

## **ARTICLE XVI.**

### **OTHER AGREEMENTS AND CONDITIONS**

#### **16.1 INDEPENDENT CONTRACTOR**

Contractor agrees that Contractor is (1) an independent contractor to Owner; and (2) an employer subject to all applicable unemployment compensation, occupational safety and health, or similar statutes so as to relieve Owner of any responsibility or liability for treating Contractor's employees as employees of Owner for the purpose of their safety or of keeping records, making reports or paying of any payroll taxes or contribution; and Contractor agrees to indemnify and hold Owner harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Contractor, including a sum equal to any unemployment benefits paid to those who were Contractor's employees, where such benefit payments are charged to Owner under any merit plan or to Owner's reserve account pursuant to any statute. To the extent Contractor offers its employees any employee benefits and/or employee compensation, Contractor shall be solely responsible for providing such employee benefits, employee compensation and/or benefits pursuant to an Employee Retirement Income Security Act ("ERISA") plan. Contractor agrees to indemnify, hold Owner harmless and reimburse Owner for any expense or liability incurred in connection with any claims or actions by the employees or agents of Contractor, its Subcontractors, Sub-subcontractors or Suppliers against Owner or any of Owner's ERISA plans relating to employee benefits or employee compensation. Nothing in the Contract shall be deemed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives or employees of Owner or its agents. Contractor shall have responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of the Contract. Anything in the Contract which may appear to give Owner or its agents the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean that Contractor shall follow the desires of Owner only as to the intended results of the Work.

#### **16.2 NO CONTRACTUAL RELATIONSHIP BETWEEN OWNER AND SUBCONTRACTOR OR SUB-SUBCONTRACTOR**

Nothing contained in the Contract or any subcontract awarded by Contractor shall create any contractual relationship between any Subcontractor or Sub-subcontractor and Owner or its agents.

#### **16.3 MAINTENANCE OF RECORDS**

Contractor further agrees, as regards the items set forth below and for the Work under the Contract, that it will keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of the Contract, so as to fully relieve and protect Owner and its agents from any and all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their Work, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state, commonwealth and local taxes, contributions, pension funds, welfare funds, or similar assessments.

#### 16.4 CONFIDENTIAL INFORMATION

Drawings, Specifications, and other information obtained by Contractor from Owner or Owner's Representative in connection with the Work including without limitation, the Contract, shall be held in strict confidence by Contractor and shall not be used by Contractor for any purpose other than for the performance of the Work or as authorized in writing by Owner or Owner's Representative, and shall not be disclosed by Contractor or any of its Subcontractors, Sub-subcontractors, Suppliers, officers, directors or agents to any third parties. All such documents furnished by Owner or Owner's Representative to Contractor shall remain the sole property of Owner, and upon completion of the Work Contractor shall, as requested by Owner or Owner's Representative, either destroy or return such documents including any copies thereof as instructed in writing by Owner or Owner's Representative. Contractor agrees to abide by the terms and conditions of that certain Confidentiality Agreement by and between Owner and Contractor.

#### 16.5 PUBLICITY

Contractor shall not make news releases, publicize or issue advertising pertaining to the Work of the Contract without first obtaining the written approval of Owner.

#### 16.6 PROPRIETARY RIGHTS

All materials which Contractor prepares or develops in the performance and completion of Contractor's Scope of Work hereunder, including documents, calculations, financial or accounting information, maps, sketches, notices, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the sole and exclusive property of Owner without limitation when made or prepared, whether delivered to Owner or Owner's Representative or not, subject to Contractor's right to use the same to perform the Work under the Contract, and such materials shall, together with any materials furnished to Contractor by Owner or Owner's Representative hereunder, be delivered to Owner or Owner's Representative upon request and in any event upon completion or termination of the Contract. Contractor agrees to execute all documents and to take all steps requested by Owner or Owner's Representative, at Owner's expense, which Owner or Owner's Representative deems necessary or desirable to complete and perfect Owner's said ownership and Owner's property rights in said inventions and copyrightable material.

#### 16.7 COMMUNICATIONS

Such communications shall include at a minimum all notices for changes, delays, surveys, tests and inspections.

All communications pursuant to or in connection with the Contract shall be identified by Owner's contract number and shall be communicated as set forth below:

- A. Form of Communication. All contractual notices given under the Contract shall be sufficient if in writing and delivered in person to the designated representative of the party to be notified, addressed as set forth below, by registered mail, telex, facsimile or cable. Telexes, facsimiles and cables must be confirmed in writing within three days thereafter.
- B. Sequential Numbers. All correspondence from Contractor shall be sequentially numbered, beginning with the number one (1) and continuing with progressing numbering until such time as final communication is completed. In addition, all correspondence from Owner will likewise be sequentially numbered. Both numbering systems are to begin with the contract number and include the sequential correspondence number as a suffix. (Example: Correspondence No.: XXXX would be the contract number and XXXX-YYY would represent the beginning sequential correspondence number).

- C. Addresses. Communications shall be addressed to the respective party at the address set forth in **Article 1.1, DEFINITION**, or the applicable Order.

## 16.8 MEDICAL SERVICES

Owner or its agents may furnish emergency medical treatment or related services to Contractor's employees in the case of a non-work connected illness or injury occurring at the Jobsite. In the event that such services are available, all such treatment or services, if any, are furnished on a Good Samaritan basis and not as a contractual obligation. In consideration of any such treatment or services, Contractor acknowledges that it assumes full and complete responsibility and liability for all injuries and damages to any of its employees arising out of or allegedly attributable in any way thereto. Nothing herein contained shall be construed as imposing any duty upon Owner or its agents to provide facilities necessary to furnish non-emergency medical treatment or related services to Contractor's employees or to make such facilities and/or services available to Contractor's employees.

## 16.9 ELECTRONIC DATA INTERCHANGE SYSTEM AND EDOCS SYSTEMS

- A. Owner is using the Auto Industry Actions Group (AIAG) version 3050 sub-set of the American National Standard Institute (ANSI) Accredited Standard Committee (ASC) X12 Electronic Data Interchange (EDI) standards. Contractor shall implement an EDI communication system with Owner that enables it to comply with Owner's EDI requirements and the eDocs Terms of Use attached hereto as **Exhibit I**.
- B. When required by Owner and pursuant to eDocs Terms of Use attached hereto, Contractor shall use the EDI and eDocs system as the means of communication under the Contract.
- C. Contractor shall identify an administrator for both the EDI system and the eDocs system. Only the administrator named by the Contractor and registered in Owner's portal shall be entitled to enable or to deactivate EDI and eDocs users for Contractor at any time.
- D. Even in the absence of electronic signatures, the parties agree that the orders, decisions and commitments communicated by them over the EDI system and the eDocs system shall be binding and shall be considered legally valid. Offers and acceptances submitted electronically via the EDI system and the eDocs system shall be legally binding upon the Contractor. Decisions and commitments communicated by one of Contractor's registered users shall constitute binding confirmation of the acceptance of orders or sales agreements. Contractor shall only grant employees and agents entitled to submit legally binding declarations of intent authorized status to make those declarations via the EDI system and the eDocs system. The user IDs and passwords created for the EDI system and the eDocs system shall only be accessible to Contractor's agents and employees who are able to submit declarations of intent, offers and acceptances that are legally binding on Contractor. Contractor shall, and shall cause its employee and agents to keep such IDs and passwords confidential. In the event Contractor terminates its relationship with an employee or agent who has knowledge of such an ID or password, Contractor shall immediately terminate that ID and/or password.
- E. Every process communicated via the EDI system and the eDocs system, and particularly offers, acceptances and communications regarding the Work shall be recorded and stored along with the identification of the user creating it. This record shall be used exclusively as evidence of the content and the fact that a party submitted a legally binding offer, acceptance or declaration of intent.

## **ARTICLE XVII.**

### **MISCELLANEOUS**

#### **17.1 OWNER DISPUTE WITH THIRD PARTY**

In the event that Owner is required to arbitrate a dispute with a third party, which dispute arises out of or is directly related to the Work to be performed by Contractor under the Contract, and/or the overall Project of which the Work is a part, and/or the Contract, and/or any other contract or agreement related, directly or indirectly, to any of the foregoing, Contractor agrees to join in such arbitration proceeding as Owner may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.

#### **17.2 VALIDITY OF PROVISIONS**

In the event any section, or any part or portion of any section of the Contract, shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section hereof; provided, however, that the intention and essence of the Contract may still be accomplished and satisfied. In the event that any provision of the Contract is held to be unenforceable or invalid by any court of competent jurisdiction, Owner and Contractor shall negotiate an equitable adjustment in the provisions of the Contract to preserve the purpose of the Contract and maintain the allocation of risks, liabilities and obligations originally agreed upon.

#### **17.3 ASSIGNMENTS**

Contractor shall not assign the Contract wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of Owner. Any assignment of the Contract in violation of the foregoing shall be, at the option of Owner, void. Subject to the foregoing, the provisions of the Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto. Owner reserves the right at its sole option to assign the Contract to its designated agent, including without limitation, its Construction Manager, or to any of Owner's affiliates.

#### **17.4 WAIVER**

Owner's or Owner's Representative's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in the Contract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

#### **17.5 SURVIVAL OF OBLIGATIONS**

Notwithstanding the acceptance of the Work by Owner or the termination of the Contract, any duty or obligation which has been incurred by Contractor and which has not been fully observed, performed and/or discharged and any right, unconditional or conditional, which has been created for the benefit of Owner and which has not been fully enjoyed, enforced and/or satisfied shall survive such acceptance or termination until such duty or obligation has been fully observed, performed and or discharged and such right has been fully enjoyed, enforced and/or satisfied.

#### **17.6 HEADINGS; INTENT**

Captions and headings in the Contract are intended for ease of reference only and shall not in any manner affect the construction or meaning of the Contract or the rights of the parties thereto. As used in the Contract, the neuter gender shall include the masculine and the feminine, the masculine and feminine genders shall be interchangeable, the singular number shall include the plural, and the plural the singular. Should a question or doubt arise as to the intent and meaning of any part of the Contract Documents,

Contractor shall immediately notify Owner and its agents in writing before the part of the Work affected is performed. Owner's and/or Owner's Representative's determination of intent and meaning of such part shall be final and binding upon Contractor.

#### **17.7 EXECUTION IN COUNTERPARTS**

This Contract may be executed in one or more counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. All signatures need not appear on the same counterpart.

#### **17.8 NO RECOURSE TO OWNER**

The obligations of Owner under the Contract are without recourse to its assets other than the Project.

#### **17.9 SPECIAL, INDIRECT AND CONSEQUENTIAL DAMAGES**

To the extent permitted by applicable law, Owner shall not be liable to Contractor in contract, tort or otherwise (including negligence, warranty or strict liability) for any incidental, special, indirect, exemplary or consequential damages arising out of or in connection with or resulting from the Contract and/or the Work, whether or not such damages arise out of, or in connection with, or result from, the negligence of Owner or its employees or agents.

#### **17.10 CONTRACT UNDER SEAL**

This Contract is executed under seal and it is the parties' express intention that this agreement be treated as such.

#### **17.11 JURISDICTION AND VENUE; GOVERNING LAW**

##### **A. Jurisdiction and Venue.**

(1) If the Owner is MBUSI, any controversy, dispute, or Claim arising out of or relating to the Contract, or the breach thereof, not otherwise resolved pursuant to **Article 10.2**, shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Tuscaloosa County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the state or federal courts sitting within Tuscaloosa County, Alabama. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any such action or proceeding, any Claim that such party is not personally subject to the jurisdiction of the state or federal court sitting in Tuscaloosa County, Alabama, that such action or proceeding is brought in an inconvenient forum, that the venue of such action or proceeding is improper or that the Contract may not be enforced in or by such state or federal court sitting in Tuscaloosa County, Alabama. Each party agrees that process against such party may be served by delivery of service of process by certified or registered mail in the manner provided for the giving of notices under the Contract.

(2) If the Owner is MBV, any controversy, dispute, or Claim arising out of or relating to the Contract, or the breach thereof, not otherwise resolved pursuant to **Article 10.2**, shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of South Carolina sitting in Charleston County, South Carolina, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the state or federal courts sitting within Charleston County, South Carolina. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as

a defense or otherwise in any such action or proceeding, any Claim that such party is not personally subject to the jurisdiction of the state or federal court sitting in Charleston County, South Carolina, that such action or proceeding is brought in an inconvenient forum, that the venue of such action or proceeding is improper or that the Contract may not be enforced in or by such state or federal court sitting in Charleston County, South Carolina. Each party agrees that process against such party may be served by delivery of service of process by certified or registered mail in the manner provided for the giving of notices under the Contract.

B. Governing Law.

(1) If the Owner is MBUSI, the Contract and all questions arising out of or in connection with the Contract shall be governed by, and construed in accordance with, the laws of the State of Alabama as if entirely performed therein and without giving effect to its conflict of law rules.

(2) If the Owner is MBV, the Contract and all questions arising out of or in connection with the Contract shall be governed by, and construed in accordance with, the laws of the State of South Carolina as if entirely performed therein and without giving effect to its conflict of law rules.

C. Contract Performance. During litigation or other dispute resolution proceedings, Owner and Contractor, unless otherwise agreed in writing, shall comply proceed diligently with performance of Work under the Contract.

D. Subcontractors and Sub-subcontractors. Contractor shall include a provision like this **Article 17.11** in each of its subcontracts and shall require its Subcontractors and Sub-subcontractors to include a similar provision in their subcontracts.

E. Remedies Cumulative. Owner's remedies herein shall be cumulative and in addition to any further remedies provided in law or equity.

**17.12 WAIVER OF TRIAL BY JURY**

**EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION, (A) ARISING OUT OF OR IN ANY WAY RELATING TO THIS CONTRACT OR ANY ORDER OR EXECUTED OR DELIVERED IN CONNECTION WITH THIS CONTRACT OR ANY ORDER OR (B) IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS CONTRACT OR ANY ORDER, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ALL PARTIES AGREE THAT ANY ONE OF THEM MAY FILE A COPY OF THIS CONTRACT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

IN WITNESS WHEREOF, the parties hereto have executed this Master Construction Agreement on the day and year below written, but effective as of the Effective Date set forth above.



**CONTRACTOR:**

\_\_\_\_\_

\_\_\_\_\_  
Date:

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

Its: \_\_\_\_\_

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_  
Date:

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Date:

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

Its: \_\_\_\_\_