

## AGREEMENT

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 1999, between the Farmer's Korner, Inc. located in the County of Summit, State of Colorado, hereinafter referred to as "Owner", and \_\_\_\_\_, a Corporation, of \_\_\_\_\_, hereinafter referred to as "Contractor."

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, Owner and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with the plans and specifications set forth in the Contract Documents, including furnishing all supervision, labor, equipment and materials therefor, hereinafter referred to as "Project".

Section 2. Contract Price. Owner shall pay Contractor for the performance of work and completion of the Project the total price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in accordance with the bid proposal submitted by Contractor. The Contract Price shall be subject to adjustment for changes in the plans and specifications or for extensions of time to complete performance, if approved by Owner and Contractor as hereinafter provided, and for changes in quantities, if bid on a unit-price basis in the bid proposal, which shall be verified by the Engineer.

Section 3. Progress Payments. Owner will make progress payments monthly on account of the Contract Price in accordance with partial payment applications prepared by the Contractor for work performed to date and approved by the Engineer and Owner. Contractor shall submit all partial payment applications for the last completed work period to the Engineer by the fifth (5th) day of each month. Owner shall authorize progress payments for the amount approved by the Engineer and Owner under such partial payment applications on or before the thirtieth (30th) day of each month. Progress payments shall not constitute final acceptance of work. Owner may withhold progress payments if: (a) Contractor's performance is inadequate or defective and not remedied in accordance with the Engineer's directions; (b) Contractor does not make prompt and proper disbursements to subcontractors on receipt of progress payments from Owner; (c) Contractor does not promptly pay for materials, labor or equipment furnished by third parties; (d) claims or liens are filed on the Project; or (e) in the Engineer's opinion, Contractor's performance is not progressing satisfactorily or completion of the Project is jeopardized by Contractor's performance.

Section 4. Retainage. An amount equal to ten percent (10%) of all progress payments shall be retained by Owner until fifty percent (50%) of the Contract Price has been paid. Thereafter Owner shall pay all remaining progress payments without retaining additional funds, if, in the opinion of the Engineer and Owner, satisfactory progress is being made on the Project. Such retainage of the Contract Price shall be held by Owner until the Project is completed satisfactorily and finally accepted by Owner in accordance with the provisions hereof.

Section 5. Final Payment. Owner shall make final payment to Contractor within thirty (30) days after final acceptance of performance by Owner, and after receipt of the Engineer's confirmation to Owner that the Project has been completed satisfactorily. Upon completion of the Project and notice thereof to Owner, the Engineer shall inspect the Project and may reject any portion of performance not in conformity with the Contract Documents. Defective materials, equipment or work shall be remedied immediately by Contractor and before final payment.

In no event shall final payment be due until Contractor has delivered to Owner a complete release of all claims or liens against the Project and has produced the necessary receipts or waivers

indicating final and total payment to all persons who have furnished materials, labor and equipment on which a lien or claim might potentially be filed. Publication of notice of final settlement pursuant to legal requirements shall also precede final payment to Contractor.

By making final payment, Owner waives all claims against Contractor, except those expressly declared to Contractor in writing or those arising out of: (a) defective performance appearing after final acceptance; (b) performance in patent noncompliance with Contract Documents, unless expressly waived by Owner; (c) outstanding claims of any nature, including but not limited to claims for property damage or personal injury arising during the construction period or liens against the Project; or (d) Contractor's failure to execute any warranties, guarantees or bonds, or to provide insurance or other indemnification required by the Contract Documents. By accepting final payment, Contractor thereby waives any and all claims of every nature against Owner, except those expressly declared to Owner in writing prior to final payment.

Section 6. Final Acceptance. Final acceptance of the Project shall follow inspection and approval of Contractor's performance by the Engineer, along with inspection by appropriate manufacturers' representatives and governmental officials pursuant to local, state and federal requirements, if necessary. Owner shall have the right and authority to determine the acceptability of Contractor's performance for conformity with the Contract Documents, which determination shall be conclusive and binding upon Contractor. Final acceptance by Owner is subject to the provisions of Section 4 herein and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

The Project, when presented to Owner for final acceptance, shall be delivered free from any and all liens, claims or encumbrances, whether then in existence or later established by law, statute, ordinance or otherwise. No lien, claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any lien, claim or encumbrance against the Project, after final acceptance by Owner and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, material man, equipment supplier, manufacturer or other person.

Section 7. Commencement and Completion of Performance. Contractor shall commence performance on the Project within seven (7) days after receipt of written notice to proceed, which shall be given on or before November 1, 1999 and will diligently prosecute all work through completion. Unless an extension of time is granted by Owner as herein provided, Contractor shall complete the Project by June 1, 1999. If Contractor does not complete performance within such maximum period, Contractor shall be responsible for all additional costs incurred by Owner due to such late performance. In addition, if Contractor does not complete performance within such maximum period, Owner shall be compensated by Contractor, at the rate of Two Hundred Fifty dollars (\$250) per day beyond such maximum period for completion, for ordinary and general damages and inconvenience (exclusive of any special damages) to Owner. Such sum shall not be considered a penalty but shall be deemed a reasonable measure of general damages which will be suffered by Owner as a consequence of such delays, such damages being difficult to ascertain by precise measurement.

No extension of time to complete performance shall be granted under normal circumstances. Extensions of time to complete performance may be authorized for any actual period of delay, on an occurrence basis, for: (a) adverse weather or climatic conditions not reasonably anticipated; (b) major labor disputes; (c) acts of God; (d) detrimental acts of Owner; (e) acts of another contractor in the performance of related work under a separate contract with Owner; (f) delays resulting from the intervention of governmental agencies in the performance of the work on the Project, if not caused by

Contractor; or (g) other extraordinary circumstances beyond Contractor's reasonable control. Foreseeable weather delays or failures in delivery of equipment or materials shall not constitute cause for an extension of time to complete performance. Any request for an extension of time to complete performance, including adjustments to the Contract Price resulting therefrom, shall be submitted in writing to the Engineer for Owner's approval within ten (10) days after such occurrence, and the decision of Owner shall be conclusive and binding upon Contractor.

Section 8. Default. At any time Owner may give to Contractor written notification of grounds for default, if: (a) Contractor fails to perform in an adequate or specified manner or proceeds in willful violation of the conditions, provisions, or terms of this Agreement or the Contract Documents, as determined by the Engineer or Owner; (b) Engineer advises Owner that performance of work on the Project is being delayed unnecessarily or that Contractor is executing its responsibilities hereunder in bad faith or contrary to the intent of this Agreement; (c) performance is not fully completed within the maximum period of time specified for completion under Section 7 herein; (d) work to be performed by Contractor under this Agreement is assigned without Owner's consent; (e) Contractor is insolvent or files for bankruptcy; (f) Contractor makes a general assignment of assets for the benefit of creditors; (g) a receiver is appointed for Contractor; or (h) other serious and reasonable cause exists, which jeopardizes completion of the Project. If Contractor shall not remedy or otherwise correct the grounds for default within ten (10) days or such additional period of time specified by Owner after receipt of such notice, Owner may thereafter terminate this Agreement and direct Contractor to discontinue any further performance on the Project, and Contractor shall then immediately stop all work on the Project and forfeit all rights hereunder. Owner, in its discretion, may request the surety of Contractor to complete the Project, or may contract with others or pay itself to perform such work at the expense of Contractor and its surety. Any increase in costs over the Contract Price and any special damages incurred by Owner as a consequence of such default, including reasonable attorneys' fees, shall be paid and satisfied in full by Contractor and its surety.

Section 9. Termination. At any time Owner may, without cause and without prejudice to any other right or remedy hereunder, elect to abandon the Project and to terminate this Agreement. In such event, Owner shall give to Contractor written notification of Project termination at least ten (10) days in advance of the Project termination date. Owner shall pay Contractor for the performance of all work, including retainage, to the Project termination date and for such additional amounts as, in the judgement of the Engineer, are reasonable to compensate Contractor for the termination of this Agreement. Final payment to Contractor shall be made in accordance with this project manual.

Section 10. Taxes, Licenses, Permits and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law, and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefor unless otherwise specified by the Engineer. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workmen's compensation, safety and health, state labor and materials, and equal employment opportunity. Owner shall reimburse Contractor for any sales or use taxes paid to the State of Colorado or any county or municipality.

Section 11. Indemnification. Contractor shall indemnify defend and hold Owner, and its agents, employees, engineers and attorneys, harmless from and against all costs, claims, damages, judgments, losses and expenses of every nature, including reasonable attorneys' fees, arising at any time out of any act or omission of Contractor, and its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work for the Contractor on the Project.

Section 12. Insurance. Contractor shall, during the term of this Agreement (a) maintain all insurance required by the Colorado State Workmen's Compensation Act or any other employee benefit law; (b) provide broad form general liability and property damage insurance in the minimum amount of \$1,000,000 for bodily injury or death or damage to property of any one person, and \$1,000,000 for bodily injury or death or damage to property of more than any one person, which may arise out of or result from Contractor's performance on the Project and for which the Contractor is responsible hereunder, designating Owner and Engineer as "additional insureds" thereunder; and (c) furnish casualty insurance for protection against damage, explosion, fire, vandalism, theft and other such dangers ordinarily included under such coverage, including loss of use resulting therefrom, to the full insurable value of all property, structures, equipment and material of Owner within Contractor's control, designating Owner as "loss payee" thereunder. Contractor shall file certificates of insurance coverage satisfactory to Owner prior to commencement of performance. Such certificates shall provide that coverages afforded thereunder shall not be canceled until at least thirty (30) days' prior written notice has been given to Owner.

Section 13. Performance Bond. Contractor shall provide to Owner, prior to commencement of performance, a general performance bond executed by Contractor and an acceptable corporate surety, or other surety or authorized collateral approved by Owner, in the full amount of the Contract Price, including provision for any adjustment thereof in accordance with the terms of this Agreement. Such performance bond shall expressly guarantee the (a) faithful performance of this Agreement and completion of the Project in strict compliance with all Contract Documents, according to the intent and meaning thereof; (b) repair and replacement, if required, or payment of the costs of all defective equipment, materials and work performed on the Project or as provided under any guarantee, condition or other Contract Document; and (c) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with completion of the Project. Contractor shall obtain such performance bond on Owner's behalf separate and apart from any similar bonds or surety or warranty agreements entered into independently between Owner and any manufacturer or supplier.

Section 14. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to Owner all workmanship, equipment and materials on or made a part of the Project and its structures for a period of one (1) year from and after the date of final acceptance. Such warranty and guarantee shall be construed to include, but is not limited to, representations that all workmanship, equipment or materials are of good quality, free from any defects or irregularities, and in absolute conformity with Contract Documents. If any defect in workmanship, equipment or materials arises within such one-year period, Contractor shall remedy or otherwise correct such defect without cost to Owner within ten (10) days after receipt of written notice of any such defect. In the event of Contractor's failure to repair such defect within ten (10) days or such additional period of time specified by Owner after receipt of such notice, Owner may contract or arrange for such repair at the complete expense of Contractor and its surety. Contractor expressly declares that the performance bond specified in Section 13 herein, shall remain in full force and effect during the period of this warranty and guarantee. Contractor shall provide such warranty and guarantee in Owner's behalf separate and apart from other warranties, guarantees and surety agreements entered into independently between Owner and any manufacturer or supplier.

Section 15. Subcontractors. Contractor shall submit a list of all major subcontractors engaged to work on the Project prior to commencement of performance. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement and the Contract Documents. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from Owner, Contractor shall disburse the same



immediately to subcontractors without any requirement of Owner to supervise the same. No contractual relationship shall exist between Owner and any subcontractor because of the subletting of any part of the Project work.

Section 16. Engineer. Official authority for the surveillance and administration of all performance under this Agreement is hereby delegated to the Engineer of Owner, who is MARTIN/MARTIN, Inc., Consulting Engineers (referred to herein as "Engineer"), unless otherwise provided in the Contract Documents. Throughout the construction period, the Engineer, or such other duly authorized representative of Owner, shall inspect the Project and shall consult with Contractor in regard to any inquiries, directions or interpretations of Contract Documents.

Section 17. Change Order. Contractor shall consult with the Engineer before a material change or alteration in Contract Documents is undertaken by Contractor, whether or not the Contract Price is affected thereby. Any change in the Contract Price shall be considered a material change for purposes of this Section 17. Any material change or alteration shall be approved in advance by proper written order signed by the Engineer and, if an adjustment to the Contract Price in excess of Five Hundred Dollars (\$500) results therefrom, by the Owner. Otherwise, Contractor proceeds at its own risk and expense, and Owner, in its discretion, may order the removal and reconstruction of any unauthorized performance in actual conflict with the Contract Documents.

Section 18. Contract Documents. The Contract Documents which comprise the entire agreement and contract between Owner and Contractor, consist of this Agreement and any Addendum thereto; the documents contained in the Project Specifications, including but not limited to notice to bidders, instructions to bidders, bid or proposal, performance, payment and maintenance bond, notice of award, notice to proceed, drawings, general and specific specifications, and any Addendum to such specifications; and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

Section 19. Assignment. Contractor shall not, at any time, assign any interest in this Agreement to any person or entity without the prior written consent of Owner. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 20. Amendment. This Agreement may be amended, from time to time, by agreement between the parties hereto. No amendment, modification or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 21. Severability. If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provisions shall not affect any of the remaining provisions of this Agreement.

Section 22. Waiver. No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 23. Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other

remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado.

Section 24. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 25. Entirety. This Agreement constitutes the entire Agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings or agreements pertaining to such matters are merged into and superseded by this Agreement.

Section 26. Conflicting Provisions. In the event any provision of this Agreement conflicts with any provision of any other Contract Document, then the provisions of this Agreement shall govern and control such conflicting provisions.

Section 27. Miscellaneous. Unless otherwise expressly provided, any reference herein to days shall mean calendar days. All times stated in this Agreement are of the essence.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

OWNER

MR. LARRY SMITH  
FARMER'S KORNER, INC.

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

ATTEST:

By \_\_\_\_\_  
Secretary

CONTRACTOR

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

STATE OF COLORADO     )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_ as President of the Farmer's Korner, Inc., Owner.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO     )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ Contractor.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

SECTION 00610

PERFORMANCE BOND

1.1 PERFORMANCE BOND

The Performance Bond form bound with this project manual must be used. Substitute forms are not acceptable.

1.2 POWER OF ATTORNEY

The Performance Bond must be accompanied by signed Power of Attorney, which may be on Surety's standard form.

1.3 Performance Bond must be in effect for the entire warranty period.

END OF SECTION



PERFORMANCE BOND

STATE OF COLORADO  
COUNTY OF GRAND

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_

\_\_\_\_\_ hereinafter called the Principal, and \_\_\_\_\_

\_\_\_\_\_ a corporation duly organized under the laws of the State of \_\_\_\_\_, hereinafter called the Surety, are held and firmly bound unto Farmer's Korner, Inc., hereinafter called the Owner, and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the improvements, hereinafter referred to in the penal sum of \_\_\_\_\_

\_\_\_\_\_ dollars in lawful money of the United States, to be paid to the order of the Owner, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain agreement with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, a copy of which is hereto attached and made a part hereof, for the performance of: Farmer's Korner Water System.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all the duties, obligations, undertakings, covenants, terms, conditions, and agreements of this contract, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and during the life of any warranty required under the contract, and shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason or failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, including cost for additional legal fees or engineering services, and shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials, equipment, and cost of rentals for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed upon this bond, venue shall lie in the State of Colorado. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, or alteration of the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_.

PRINCIPAL \_\_\_\_\_

By \_\_\_\_\_ Attest \_\_\_\_\_  
Title \_\_\_\_\_ Title \_\_\_\_\_

SURETY \_\_\_\_\_

(seal)

By \_\_\_\_\_  
Title \_\_\_\_\_

SECTION 00650

CERTIFICATE OF INSURANCE

1.1 CERTIFICATE OF INSURANCE

The Certificate of Insurance form bound with this project manual shall be provided by the Contractor with the executed contract prior to Owner's signature. Required limits of liability and additional insureds are indicated on the certificate.

END OF SECTION

# CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER.  
THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

NAME AND ADDRESS OF AGENCY:

COMPANIES AFFORDING COVERAGES

COMPANY  
LETTER A

COMPANY  
LETTER B

NAME AND ADDRESS OF INSURED:

COMPANY  
LETTER C

COMPANY  
LETTER D

ADDITIONAL INSURED:

COMPANY  
LETTER E

OWNER:

ENGINEER: MARTIN/MARTIN, INC.

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER EXPIRATION DATE	LIABILITY	LIMITS OF LIABILITY IN THOUSANDS(000) EACHAGGREGATE OCCURRENCE
<b>GENERAL LIABILITY</b>				
	COMPREHENSIVE FORM PREMISES-OPERATIONS EXPLOSION AND COLLAPSE HAZARD UNDERGROUND HAZARD PRODUCTS/COMPLETED OPERATIONS HAZARD		BODILY INJURY	\$ \$
	CONTRACTUAL INSURANCE BROAD FORM PROPERTY DAMAGE INDEPENDENT CONTRACTORS PERSONAL INJURY		PROPERTY DAMAGE	\$ \$
			BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$ \$
				PERSONAL INJURY \$
	<b>AUTOMOBILE LIABILITY</b>		BODILY INJURY (EACH PERSON)	\$
	COMPREHENSIVE FORM OWNED HIRED NON-OWNED		BODILY INJURY (EACH ACCIDENT) PROPERTY DAMAGE	\$ \$
			BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$
	<b>EXCESS LIABILITY</b>			
	UMBRELLA FORM OTHER THAN UMBRELLA FORM		BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$ \$
	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY OTHER</b>		STATUTORY	\$ \$ (EACH ACCIDENT)

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES

**CANCELLATION:**

Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER:

DATE ISSUED: \_\_\_\_\_

OWNER:

AUTHORIZED REPRESENTATIVE

SECTION 00700  
GENERAL CONDITIONS

- |  |                                    |
|--|------------------------------------|
| 1. DEFINITIONS   | 5. CONSTRUCTION PHASE REQUIREMENTS |
| 2. CONTRACT DOCUMENTS  | 6. CONTRACT CLOSEOUT               |
| 3. RESPONSIBILITIES AND AUTHORITY OF OWNER, ENGINEER AND CONTRACTORS | 7. MISCELLANEOUS PROVISIONS        |
| 4. PRECONSTRUCTION REQUIREMENTS                                      |                                    |

ARTICLE 1 - DEFINITIONS

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

1.1 ADDENDA - Written or graphic documents issued prior to execution of the Agreement which modify or interpret the Contract Documents by additions, deletions clarifications or corrections.

1.2 AGREEMENT - The written Agreement between Owner and Contractor covering the work to be performed.

1.3 APPLICATION FOR PAYMENT - The form which is to be used by the Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

1.4 BID - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed.

1.5 BIDDER - Any person, firm or corporation submitting a Bid for the work.

1.6 BONDS - Bid and Performance Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

1.7 CHANGE ORDER - A written order to the Contractor issued after execution of the Agreement authorizing an addition, deletion or revision in the work or an adjustment in the contract price and/or the contract time.

1.8 CONTRACT DOCUMENTS - The contract, including Advertisement for Bids or Invitation to Bid, Instructions to Bidders, Bid Form and all required attachments, Bid Bond or other bid security, Notice of Award, Agreement, Performance Bond, Notice to Proceed, General Conditions, Supplementary Conditions, Specifications, Drawings, Plans, Addenda and all modifications issued after execution of the Agreement.

1.9 CONTRACT PRICE - The total monies payable by

the Owner to the Contractor under the Contract Documents and as stated in the Agreement.

1.10 CONTRACT TIME - The number of calendar days or the date stated in the Agreement for the substantial completion of the work.

1.11 CONTRACTOR - The person, firm or corporation with whom the Owner has executed the Agreement.

1.12 DAY - Calendar day of twenty-four hours measured from midnight to the next midnight.

1.13 DRAWINGS, PLANS, DETAILS - Graphic documents which show the character and scope of the work to be performed and which have been prepared or approved by the Engineer.

1.14 ENGINEER - The person, firm or corporation named as such in the Contract Document.

1.15 FIELD ORDER - A written order issued by the Engineer to the Contractor which orders minor changes in the work not involving a change in the Contract price or Contract Time.

1.16 GENERAL REQUIREMENTS - Sections of Division 1 of the Specifications.

1.17 MODIFICATION - (a) A written amendment to the Contract Documents signed by both parties, (b) a change order, or (c) a field order. a modification may only be issued after execution of the Agreement.

1.18 NOTICE OF ACCEPTANCE - Written notice from the Owner accepting the project or portion thereof as being substantially complete and stating the date upon which the contractor's project warranty will begin.

1.19 NOTICE OF AWARD - The written notice of the acceptance of the bid from the owner to the successful bidder.

1.20 NOTICE TO PROCEED - Written notice from the Owner to the Contractor authorizing him to proceed with the work and establishing the date upon which the contract time will begin.



1.21 OWNER - A public or quasi-public body or authority, corporation, association, partnership or individual with whom the Contractor has entered into the Agreement and for whom the work is to be provided.

1.22 PRODUCT DATA - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other printed information furnished by the Contractor to illustrate a material, product or system for some portion of the work. Sometimes erroneously referred to as shop drawings.

1.23 PROJECT - The total construction of which the work to be provided under the contract documents may be the whole or a part.

1.24 PROJECT MANUAL - A single written document including bidding requirements, contract forms, general and supplementary conditions, specifications and other procedural, administrative or technical documents. Sometimes erroneously referred to as the specifications.

1.25 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the Owner who is assigned to the project site or any part thereof.

1.26 SAMPLES - Physical samples of materials or products to be incorporated into the work.

1.27 SHOP DRAWINGS - Drawings, diagrams, schedules or other data prepared specifically for this project by the Contractor, a Subcontractor, manufacturer, supplier or distributor which illustrate how specific portions of the work are to be fabricated or installed.

1.28 SPECIFICATIONS - Those portions of the contract documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship and certain related administrative details.

1.29 SUBCONTRACTOR - An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

1.30 SUBSTANTIAL COMPLETION - That date when construction of the project or a specified part thereof is sufficiently completed in accordance with the contract documents that it can be utilized for the purpose for which it is intended.

1.31 SUPPLEMENTARY CONDITIONS - Supplements or modifications to the general conditions as required by a specific project.

1.32 SUPPLIER - Any person or organization who supplies materials or equipment for the work including that fabricated to a special design, but who does not perform labor at the site.

1.33 UNIT PRICE - An amount stated in the bid as a price per unit of measurement for materials or services as described in the contract documents.

1.34 WORK - All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.

1.35 WRITTEN NOTICE - Any notice to any party of the agreement relative to any part of the agreement which is delivered in writing. Written notice shall be deemed to have been duly served when posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the work.

## ARTICLE 2 - CONTRACT DOCUMENTS

### 2.1 INTENT OF CONTRACT DOCUMENTS

2.1.1 The contract documents comprise the entire agreement between Owner and Contractor concerning the work to be performed. They may be altered only by a modification.

2.1.2 The contract documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the work, the Contractor finds a conflict, error or discrepancy in the contract documents, he shall report it to the owner and engineer in writing at once and before proceeding with the work affected thereby; however, the Contractor shall not be liable to the Owner for failure to report any conflict, error or discrepancy in the specifications or drawings unless the Contractor has actual knowledge thereof or should reasonably have known thereof.

2.1.3 It is the intent of the specifications and drawings to describe a complete project (or part thereof) to be constructed in accordance with the contract documents. Any work that may reasonably be inferred from the specifications or drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of bids (or, on the effective date of the agreement if there were no bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall change the duties and responsibilities of Owner, Contractor or Engineer, or any of their agents or employees from those set forth in the contract documents. Clarifications and interpretations of the contract documents shall

be issued by Engineer and provided for in Article 3.

2.1.4 The contract documents will be governed by the law of the place of the project.

2.2 REUSE OF CONTRACT DOCUMENTS - Neither Contractor nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the drawings, specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer; and they shall not reuse any of them on extensions of the project or any other project without written consent of Engineer and specific written verification or adaptation by Engineer.

2.3 COPIES OF DOCUMENTS - Unless otherwise specified, the Owner will furnish the Contractor with up to ten copies of the contract documents for execution of the work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.4 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS - The Contractor may be furnished additional instructions and detail drawings by the Engineer as necessary to carry out the work required by the contract documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

2.5 DISCREPANCIES - In case of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings. Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Owner and Engineer, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities and prior to receiving such written correction shall be done at the Contractor's work.

### ARTICLE 3 - RESPONSIBILITIES AND AUTHORITY OF OWNER, ENGINEER AND CONTRACTORS

#### 3.1 OWNER

3.1.1 LANDS AND RIGHTS-OF-WAY - Prior to issuance of notice to proceed, the Owner shall obtain all lands and right-of-way necessary for carrying out and for the completion of the work required by the contract documents, unless otherwise mutually agreed. The Owner shall provide to the Contractor information which delineates and describes the lands owned and rights-of-way acquired.

3.1.2 SURVEYS AND REFERENCE POINTS - The Owner

shall furnish all boundary surveys and establish necessary bench marks, base lines, center lines slope and offset stakes for the proper location of the work. The Contractor shall give the Owner forty-eight (48) hours notice as to the location and placement of said surveys.

3.1.3 OWNERS INSTRUCTIONS - Unless otherwise specified, the Owner shall issue all communications to the Contractor through the Engineer.

3.1.4 TERMINATION OF ENGINEER - In case of termination of the employment of the Engineer the Owner shall appoint an Engineer against whom the Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer. Any dispute in connection with such appointment shall be subject to arbitration.

3.1.5 DATA AND PAYMENTS - The Owner shall furnish all data required under the contract documents promptly and shall make payments to the Contractor promptly as due.

3.1.6 INVESTIGATIONS AND REPORTS - The Owner shall make available to the Contractor copies of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting performance of the work which have been relied upon by the Engineer in preparing the contract documents. Such investigations and reports are not guaranteed as to accuracy or completeness and are not part of the contract documents.

3.1.7 CHANGES IN THE WORK - The Owner may at any time, as the need arises, order changes in the work without invalidating the agreement. If such changes increase or decrease the amount due under the agreement, or in the contract time, an equitable adjustment shall be authorized by change order.

3.1.8 TESTING AND INSPECTION - The Owner shall provide all inspection and testing services not required by the contract documents.

3.1.9 OWNER'S USE AND ACCESS - Prior to substantial completion, the Owner may, with the recommendation of the Engineer and concurrence of the Contractor use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work. The Owner or his separate contractors shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except as may be caused by separate contractors or other agents or employees of the Owner.

#### 3.2 ENGINEER

3.2.1 OWNER'S REPRESENTATIVE - The Engineer shall

act as the Owner's representative during the construction period. He shall decide questions which may arise as the quality and acceptability of materials furnished and work performed. He shall promptly interpret the intent of the contract documents in a fair and unbiased manner.

3.2.2 VISITS TO SITE - The Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the contract documents. The Engineer will keep the Owner informed of the progress of the work and will endeavor to guard the Owner against defects and deficiencies in the work.

3.2.3 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS -The Engineer shall promptly process shop drawings, change orders and payment applications as provided in other Articles of these General Conditions.

3.2.4 FIELD ORDERS - The Engineer may authorize minor changes in the work not involving an adjustment in the contract price or contract time by issuing a field order.

3.2.5 ENGINEER'S RESPONSIBILITIES - The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto and the Engineer will not be responsible for the Contractor's failure to perform the work in accordance with the contract documents. The Engineer will not be responsible for the acts or omissions of the Contractor or of any Subcontractor, or of the agents or employees of any Contractor or Subcontractor, or of any other persons at the site or otherwise performing any of the work.

3.2.6 UNACCEPTABLE WORK - As the Owner's representative, the Engineer will have authority to recommend disapproval or rejection of unacceptable materials or workmanship and will also have authority to require special testing, whether or not the work is fabricated, installed or completed.

### 3.3 CONTRACTOR

3.3.1 LANDS AND RIGHTS-OF-WAY - The Owner shall furnish all lands and rights-of-way described under Article 3.1.1. The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials and equipment, housing, location of housing or other required uses.

3.3.2 REFERENCE POINTS - The Owner will furnish necessary benchmarks, baselines, centerlines, slope and offset stakes for the proper location of the work. The Contractor shall furnish all additional stakes as he determines necessary to assure work is completed to the proper alignment and grades required by the contract documents.

3.3.3 SUPERVISION AND SUPERINTENDENCE - The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

3.3.4 MATERIALS, SERVICES AND FACILITIES - It is understood that, except as otherwise specifically stated in the contract documents, the Contractor will provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of an any nature, and all other services and facilities of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time. Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer. Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer. Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

3.3.5 PATENTS - The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

3.3.6 PERMITS - Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor unless otherwise stated in the Supplementary Conditions. The Contractor shall also obtain and pay for all special permits called for by the supplementary conditions or various sections of the specifications. The Contractor shall pay all charges of utility service companies for temporary connections to the work and the Owner shall pay all charges of such companies for capital costs related thereto.

3.3.7 LAWS AND REGULATIONS - The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any work knowing or having reason to know that it is contrary to applicable laws, ordinances, rules and regulations and without notifying the Engineer, the Contractor shall bear all resulting costs. However, it shall not be the Contractor's primary responsibility to make certain that the contract documents are in accordance with such laws, ordinances, rules and regulations.

3.3.8 TAXES - Unless stated otherwise in the Supplementary Conditions, the Contractor shall pay all sales, consumer, use and other similar taxes required by the law of the place where the work is performed.

3.3.9 SCHEDULES, REPORTS AND RECORDS - The Contractor shall prepare, maintain and submit all schedules, reports and records required by the General Conditions, Supplementary Conditions or various sections of the specifications.

3.3.10 PROTECTION OF WORK, PROPERTY AND PERSONS - The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor will comply with all applicable laws, ordinances, rules, regulations and order of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. He will notify Owners of adjacent utilities when prosecution of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, or his Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

In emergencies affecting the safety of persons or the work or

property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. He will give the Engineer prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.

### 3.4 SUBCONTRACTORS

3.4.1 LIMITATION OF USE - The Contractor may utilize the service of specialty Subcontractors on those parts of the work which under normal contracting practices are performed by specialty Subcontractors. The Contractor shall not award work to Subcontractors in excess of fifty percent (50%) of the contract price without prior written approval of the Owner.

3.4.2 ACCEPTABLE SUBCONTRACTORS - The Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute against whom the Owner may have reasonable objection. A Subcontractor or other organization identified in writing to the Owner by the prior to execution of Agreement will be deemed acceptable. If the Owner after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by the Contractor, the Contractor shall submit all acceptable substitutes and the contract price shall be increased or decreased by the difference in cost occasioned by such substitution. The Contractor shall not be required to employ any Subcontractor, person or organization against whom the Contractor has reasonable objection.

3.4.3 ACTS AND OMISSIONS - The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

3.4.4 SUBCONTRACTS - The Contractor shall insert appropriate provisions in all Subcontracts relative to the work to bind Subcontractor to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractor and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

3.4.5 CONTRACTUAL RELATION - nothing contained in this contract shall create any contractual relation between any Subcontractor and the Owner.

3.4.6 DIVISION OF WORK - The divisions and sections of the specifications and the identifications of any drawings shall not control the Contractor in dividing the work among Subcontractors or delineating the work to be performed by any specific trade.

### 3.5 SEPARATE CONTRACTORS



3.5.1 OWNER'S RIGHT - The Owner reserves the right to let other contracts in connection with this project.

The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.

3.5.2 ADDITIONAL WORK - The Owner may perform additional work related to the project by himself, or he may let other contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such contracts (or the Owner, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his work with theirs.

3.5.3 WRITTEN NOTICE - If the performance of additional work by other Contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others involves him in additional expense or entitles him to an extension of the contract time, he may make a claim therefore as provided.

#### ARTICLE 4 - PRECONSTRUCTION REQUIREMENTS

4.1 CONTRACT SECURITY - The Contractor shall furnish the Owner along with the executed contract, a performance bond in penal sum equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by the contract documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State in which the work is to be performed. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the State in which the work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

4.2 INSURANCE - The Contractor shall furnish the Owner along with the executed contract, certificates of insurance acceptable to the Owner indicating that coverages required by the supplementary conditions have been obtained. Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to the Owner. The Owner and Engineer shall be named as the additional insured under the liability policy, evidence to be shown on the certificate.

4.2.1 The Contractor and/or Subcontractor shall maintain and keep in force builders' risk insurance covering construction of real property or installation of other property during the construction period. Coverage perils to be no less than fire, extended coverage, vandalism and malicious mischief. Evidence of insurance covering property in the course of construction shall be provided with the executed agreement.

4.3 LIST OF SUBCONTRACTORS AND MATERIAL SUPPLIERS - The Contractor shall furnish the Owner along with the executed agreement a list of all Subcontractors he intends to employ on the project and all other persons or organizations furnishing the principal items of materials or equipment, along with the amounts of their subcontracts or purchase contracts.

4.4 CONSTRUCTION SCHEDULE - The Contractor shall submit to the Owner along with the executed agreement a proposed construction progress schedule showing the order in which he proposes to carry on the work, including dates at which he will start the various parts of the work, estimated date of completion of each part and, as applicable the dates at which special detail drawings will be required and respective dates for submission of shop drawings; the beginning of manufacture; the testing and the installation of materials, supplies and equipment. The schedule shall be in a form acceptable to the Engineer, and shall indicate the time start and completion of each of the line items on the schedule of values. The contract time shall be as specified in the agreement. The schedule shall be revised by change order. The Owner and Engineer shall be entitled to rely upon the accuracy of the Contractor's construction schedule in the scheduling of their own work and that of other Contractors.

4.5 SCHEDULE OF VALUES - If requested, the Contractor shall furnish the Owner along with the executed agreement a schedule of values including quantities and unit prices aggregating the total contract price and subdividing the work into component parts in sufficient detail to serve as a basis for progress payments during construction. Upon acceptance of the schedule of values by the Engineer, it shall be incorporated by the Engineer into a standard form of periodic estimate for partial payment.

4.6 PRECONSTRUCTION CONFERENCE - Before the Contractor begins work at the site, a conference will be held for review of the construction schedule, to establish procedures for handling shop drawings and other submittals, and for processing



applications for payment and to establish a working understanding among the parties as to the work.

4.7 PAYMENT DATES - At the time of executing the agreement, the Contractor and Owner shall agree on the dates that periodic estimates for partial payment are to be filed and that payment to the Contractor is due.

#### ARTICLE 5 - CONSTRUCTION PHASE REQUIREMENTS

5.1 USE OF PREMISES - The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits or the requirements of the contract documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

5.2 FIELD ENGINEERING - Work done by the Contractor without being properly located from established base lines, centerlines, offset stakes or their basic reference points furnished by the Owner may be ordered removed and replaced at the Contractor's expense. The Contractor shall carefully preserve all Owner-established base lines, offset stakes, benchmarks, slope stakes, centerline stakes or other basic reference points. In case of willful or careless destruction of same, the Contractor will pay the cost of replacement of said stakes and shall be responsible for any error or delay in work caused thereby. In such case the Contractor shall have no claim for damages or extension of the contract time.

5.3 CLEANUP - During the progress of the work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from work. At the completion of the work the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Owner. The Contractor shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

5.4 RECORD DOCUMENTS - The Contractor shall keep one record copy of all specifications, drawings, addenda, modifications, shop drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to the Engineer for examination and shall be delivered to the Engineer for the Owner upon completion of the work.

#### 5.5 INSPECTION AND TESTING

5.5.1 All materials and equipment used in the construction of the project shall be subject to inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents.

5.5.2 The Owner shall provide all inspection and testing

services not required by the contract documents.

5.5.3 The Contractor shall provide at his expense the testing and inspection services required by the contract documents.

5.5.4 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected specifically, tested, or approved by someone other than the Contractor, the Contractor shall notify the Engineer at least forty-eight (48) hours prior to the time such inspection, testing, or approval will be required. The Contractor shall then furnish the Engineer the required certificates of inspection, testing or approval.

5.5.5 Inspections, tests or approvals by the Engineer or others shall not relieve the Contractor from his obligations to perform the work in accordance with the requirements of the contract documents.

5.5.6 The Engineer and his representatives will at all times have access to the work. If applicable, authorized representatives and agents of any participating government agency and any local government with jurisdiction shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.

5.5.7 If any work is covered contrary to the instructions of the Engineer it must, if requested by the Engineer, be uncovered for his observation and if directed by the Engineer replaced at the Contractor's expense.

5.5.8 If the Engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

#### 5.6 CORRECTION OF WORK

5.6.1 The Contractor shall promptly remove from the premises all work rejected for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to

the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

5.6.2 All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

5.7 UNFORESEEN PHYSICAL CONDITIONS - The Contractor shall promptly notify the Owner and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the contract documents. The Engineer will promptly review those conditions and advise the Owner in writing if further investigation or tests are necessary. Promptly thereafter, the Owner shall obtain the necessary additional investigations and tests and furnish copies to the Engineer and Contractor. If the Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the contract documents and which could not reasonably have been anticipated by the Contractor, a change order shall be issued incorporating the necessary revisions.

#### 5.8 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

5.8.1 The Contractor shall provide shop drawings and product data as may be necessary for the prosecution of the work as required by the contract documents. The Engineer shall promptly review all shop drawings and product data. The Engineer's review shall not release the Contractor from responsibility for deviations from the contract documents unless such deviations have been called to the Engineer's attention in writing at the time of submission and the Engineer has given written concurrence to such deviation. Review of shop drawings or product data by the Engineer shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings or product data.

5.8.2 When submitted for the Engineer's review, shop drawings and product data shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings or product data and they are in conformance with the requirements of the contract documents.

5.8.3 The Contractor shall also submit to the Engineer for review with such promptness as to cause no delay in work, all samples required by the contract documents. All samples will have been checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

5.8.4 Portions of the work requiring a shop drawing or product data or sample submissions shall not begin until the

shop drawing, product data or sample submission has been reviewed by the Engineer. A copy of each shop drawing or product data submittal and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer.

5.9 SUBSTITUTIONS - Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalog number, and if, in the opinion of the Engineer, such material, article, or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

#### 5.10 CHANGES IN THE WORK

5.10.1 CHANGE ORDERS - The Owner may at any time, as the need arises, order changes without invalidating the agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.

5.10.2 FIELD ORDERS - The Engineer, also, may at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so requested by the Engineer unless the Contractor believes that such field order entitles him to a change in contract price or time, or both in which event he shall give the Owner written notice thereof within seven (7) days after the receipt of the requested change. Thereafter the Contractor shall document the basis for the change in contract price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Owner.

5.10.3 CHANGES IN CONTRACT PRICE - The contract price may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved.

- (b) An agreed lump sum.
- (c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the work to cover the cost of general overhead and profit.

## 5.11 PAYMENTS TO CONTRACTOR

5.11.1 PARTIAL PAY ESTIMATE - At least fifteen (15) days before each progress payment falls due (but not more than once a month) the Engineer will prepare a periodic estimate of partial payment based on in-place quantities agreed upon between the Contractor and Engineer at the site. The Engineer will forward one copy to the Owner and one copy to the Contractor.

5.11.2 CONTRACTOR'S STATEMENT - Upon receipt of periodic estimate of partial payment from the Engineer, the Contractor shall forward a statement to the Owner in care of the Engineer requesting payment in the amounts listed on the periodic estimate of partial payment.

5.11.3 ENGINEER'S RECOMMENDATION - Upon receipt of the Contractor's statement, the Engineer will forward same to the Owner recommending payment to the Contractor and clarifying or explaining any of the amounts due.

5.11.4 OWNER'S PAYMENT - Upon receipt of the Engineer's recommendation, the Owner shall within thirty (30) days forward payment directly to the Contractor minus any specified retainage.

5.11.5 BASIS FOR PAYMENT - payment will be made on the basis of completed work only. No payment will be made of stored materials, either at the site or elsewhere.

5.11.6 RETAINAGE - An amount equivalent to ten (10) percent of the amount shown to be due the Contractor on each estimate shall be withheld on the first fifty (50) percent due the Contractor. Thereafter, the Owner shall make all remaining payments without retainage if in the opinion of the Owner and Engineer, satisfactory progress is being made in the work.

5.11.7 WARRANTY OF TITLE - The Contractor warrants that title to all work, materials and equipment covered by an partial payment will pass to the Owner at the time of payment free and clear of all liens, claims, security interests and encumbrances.

## ARTICLE 6 - CONTRACT CLOSE OUT

### 6.1 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

6.1.1 The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work shall be commenced on a date specified in the notice to

proceed.

6.1.2 The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

6.1.3 If the Contractor shall fail to complete the work within the Contract Time, or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

6.1.4 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the Contractor has promptly given written notice of such delay to the Owner or Engineer:

a) To any preference, priority or allocation order duly issued by the Owner.

b) To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God; or the public enemy; acts of the Owner; acts of another Contractor in the performance of a contract with the owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; any abnormal and unforeseeable weather; and

c) To any delays of Subcontractors occasioned by any of the causes listed above.

### 6.2 FINAL PAYMENT TO CONTRACTOR

6.2.1 Upon completion and acceptance of the work, the Engineer shall issue a statement attached to the final estimate for partial payment that the work has been reviewed by him and to the best of his knowledge, information and belief the contract documents have been complied with. The entire balance found to be due the Contractor including the retained percentages but except such sums as may be lawfully retained by the Owner shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.

6.2.2 Final payment will not be made until after publication of notice of Contractor's settlement or receipt of lien waivers from the Contractor, Subcontractors, and material suppliers as is determined to be applicable by the Engineer.

6.2.3 In the case of publicly funded projects, the project will be advertised for final settlement using the following procedure:

Upon completion the project shall be advertised in accordance with the notice of Contractor's settlement, by two publications of notice, the last publication appearing at least ten (10) days prior

to the time of final settlement.

On the date of final settlement thus advertised, and after the Contractor has submitted a written notice to the Owner that no claims have been filed, final payment and settlement shall be made in full.

If any unpaid claim for labor, materials, supplies or equipment is filed before payment in full of all sums due to the Contractor, the Owner shall withhold from the Contractor sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a notarized receipt in full or notarized order for withdrawal signed by the claimant or his duly authorized agent or assignee.

6.2.4 If the work shall be completed, but final completion thereof shall be prevented through delay or correction of minor defects or unavailability of materials, or other causes beyond the control of the Contractor, the Owner at his discretion may release to the Contractor such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work.

6.2.5 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

6.3 ACCEPTANCE OF FINAL PAYMENT AS RELEASE - The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or his Sureties from an obligations under the Contract Documents or Performance Bond.

6.4 FINAL PAPERWORK - neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner: 1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in anyway be responsible, have been paid or otherwise satisfied, 2) consent of Surety, 3) other data establishing payment or satisfaction of all such obligations, such as receipts, release and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the owner, 4) all guarantees and warranties, 5) all statements to support sales and use tax refunds, if applicable, 6) bound copies of operating and maintenance manuals, 7) identification lists of materials and equipment and 8) set of record documents; and the Contractor demonstrates to the Owner the proper operation and maintenance of all equipment.

## ARTICLE 7 - MISCELLANEOUS PROVISIONS

### 7.1 SUSPENSION OF WORK, TERMINATION AND DELAY

7.1.1 The Owner may suspend the Work or any portions thereof for a period of not more than ninety (90) days or such further time as agreed upon by the Contractor, by Written Notice to the Contractor and the Engineer which notice shall fix the date on which Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

7.1.2 If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his Surety a minimum of ten (10) days from delivery of a Written Notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such