

APPENDIX B-1

RFP # 2025-12

BEACON ISLAND PHASE 3
Packaged Wastewater Treatment Plant
and
Fire Pump House and Marine Inlet

GENERAL CONDITIONS

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GENERAL CONDITIONS

PART 1 - CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The Contract Documents

The Contract Documents consist of the Owner-Contractor Agreement, the General Conditions of the Contract, the Drawings, the Specifications, and all Addenda issued prior to, and all Modifications, issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Engineer pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the work issued by the Engineer pursuant to Paragraph 12.6.

1.1.1.1 PRECEDENCE OF DOCUMENTS

In case of discrepancy between the Contract Documents, preference shall be given in the following order, with later dates taking preference over earlier dates:

- (1) Modifications
- (2) Agreement
- (3) General Conditions
- (4) Addenda
- (5) Request for Proposals
- (6) Revisions to the Drawings
- (7) Revisions to the Specifications
- (8) Drawings
 - (a) Schedules and piping and wiring diagrams take precedence over other data shown on the drawings.
 - (b) Notes take precedence over other data shown on the drawings, except schedules and piping and wiring diagrams.
- (9) Specifications

1.1.2 The Contract

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between

the Engineer and/or Owner's Representative and the Contractor, but the Engineer and/or Owner's Representative shall be entitled to performance of obligations intended for his/her or the Owner's benefit, and to enforcement thereof.

Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Engineer and/or Owner's Representative and any Subcontractor or Sub-subcontractor.

1.1.2 The Work

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.3 The Project

The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part.

1.1.4 Project Site

The project site is the space available to the Contractor for performing construction activities, either exclusively or in conjunction with others performing other work as part of the project.

1.1.5 Testing Agencies

A testing agency is an independent entity engaged to perform specific inspections or tests, either at the project site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

1.1.6 FURNISH

"Furnish" shall be considered to mean supply and deliver to the project site, ready for unloading, unpacking, assembly, installation, and similar operations of all equipment and/or materials with necessary or appropriate accessories, essential to the performance of its function, or required in joining or adding to another thing.

1.1.7 INSTALL

"Install" shall be considered to mean operations including unloading, storage, unpacking, assembling, erecting, mounting, building, anchoring, applying, finishing, curing, cleaning, protecting or other similar operations to establish in-place equipment, materials, or systems as required for use or service.

1.1.8 CONNECT

"Connect" shall be considered to mean the labor and materials necessary to join or attach equipment, materials, or systems to perform the function intended.

1.1.9 PROVIDE

“Provide” shall be considered to mean furnish, install, and connect complete, ready for intended use.

1.2 INTENT

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations, which have well-known technical, or trade meanings are used in the Contract Documents in accordance with such, recognized meanings.

1.2.2 The organization of the specifications into divisions, sections and articles, and the arrangement of drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 SITE CONDITIONS

1.3.1 The Contractor shall satisfy itself concerning the nature and location of work and the general and local conditions, and particularly, but without limitation with respect to the following: those affecting transportation, access, disposal, handling and storage of materials, availability and quality of labor, climatic conditions and seasons; physical conditions at the work sites and the project area as a whole, topography and ground surface conditions, and nature and quantity of surface and subsurface materials to be encountered, equipment and facilities needed preliminary to and during performance of the Contract; and all other matters which can in any way affect performance of the Contract, or the cost associated with such performance. The failure of the Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the Contract.

1.3.2 By executing the Contract, the Contractor represents that he/she has visited the site, familiarized themselves with the local conditions under which the work is to be performed, and correlated his/her observations with the requirements of the Contract Documents.

1.3.3 Where the Owner has made investigations of sub-surface conditions in areas where work is to be performed under the Contract, such investigations are made only for the purpose of study and design. The records of such investigations are not a part of the Contract and are furnished solely for the convenience of the Contractor.

1.3.4 The Contractor shall promptly notify the Owner when site conditions are discovered which differ materially from those indicated in the Contract, or unknown physical conditions at the site, of any unusual nature, differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Owner will, as promptly as practicable, investigate the conditions and make a determination. If it is determined that such conditions do materially so differ and cause an increase or decrease in

Contractor's cost of, or the time required for, performance of any part of any work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified in writing accordingly. No claim of Contractor under this Article will be allowed unless the Contractor has given the required notice.

1.4 OWNERSHIP AND USE OF DOCUMENTS

- 1.4.1 All Drawings, Specifications and copies thereof furnished by the Engineer are and shall remain his/her property. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Engineer at the completion of the work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Engineer common law copyright or other reserved rights.

1.5 CONTRACT TIMES

- 1.5.1 The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

1.6 SUBSTANTIAL COMPLETION

- 1.6.1 The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

PART 2 – ENGINEER AND OWNER'S REPRESENTATIVE

2.1 DEFINITION

- 2.1.1 . The term Engineer means the Engineer of Record or his/her authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

- 2.2.1 The Owner's Representative will provide administration of the Contract as hereinafter described.
- 2.2.2 The Owner's Representative will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Owner's Representative. The Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.16.
- 2.2.3 The Owner's Representative will visit the site at intervals appropriate to the stage of

- construction to familiarize himself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents.
- 2.2.4 The Owner's Representative will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, and he/she will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Owner's Representative will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the work.
- 2.2.5 The Owner's Representative shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Owner's Representative may perform his/her functions under the Contract Documents.
- 2.2.6 Based on the Owner's Representative observations and an evaluation of the Contractor's Applications for Payment, the Owner's Representative will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.
- 2.2.7 The Owner's Representative will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor.
- 2.2.8 The Owner's Representative will render interpretations necessary for the proper execution or progress of the work, with reasonable promptness and in accordance with any time limit agreed upon. The Contractor may make written request to the Owner's Representative for such interpretations.
- 2.2.9 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents shall be referred initially to the Owner's Representative for decision, which he/she will render in writing within a reasonable time.
- 2.2.10 All interpretations and decisions of the Owner's Representative shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 2.2.11 The Owner's Representative will have authority to reject work which does not conform to the Contract Documents. Whenever, in his/her opinion, he/she considers it necessary or advisable for the implementation of the intent of the Contract Documents, he/she will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such work be then fabricated, installed, or completed. However, neither the Owner's Representative authority to act under this Subparagraph 2.2.11, nor any decision made by him/her in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner's Representative to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

- 2.2.12 The Engineer will review or take other appropriate action upon Contractor's submittals such as shop drawings, product data, and samples, but only for conformance with the design concept of the work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's review of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.13 The Engineer will prepare Change Orders in accordance with Article 12 and will have authority to order minor changes in the work as provided in Subparagraph 12.6. The Owner's Representative will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.
- 2.2.14 If the Owner and Owner's Representative agree, the Owner's Representative will provide one or more Inspectors to assist the Owner's Representative in carrying out his/her responsibilities at the site. Inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter or waive any requirements of the specification, nor is authorized to approve or accept any portion of the completed project. He/she shall call the attention of the Contractor to any failure of the work or materials to conform to the specifications and Contract and shall have the authority to reject materials. Any dispute between the Inspector and Contractor shall be referred to the Owner's Representative. Any advice which the Inspector may give the Contractor shall in no way be construed as binding the Owner's Representative in any way or releasing the Contractor from fulfilling any of the terms of the Contract.
- 2.2.15 The duties, responsibilities, and limitations of authority of the Owner's Representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner and the Owner's Representative.
- 2.2.16 In case of the termination of employment of the Owner's Representative, the Owner may appoint an Owner's Representative against whom the Contractor makes no reasonable objection to whose status under the Contract Documents shall be that of the former Owner's Representative. The Owner may also elect to be the sole contract authority without external representation of an Owner's Representative.

PART 3 - OWNER

3.1 DEFINITION

- 3.1.1 The Owner is the entity identified as the Albany Port District Commission (APDC) in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term Owner means the Owner or his/her authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 3.2.1 The Owner shall furnish all surveys describing the physical characteristics, legal limitations, and utility locations for the site of the project, and a legal description of the site.
- 3.2.2 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.
- 3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, digital copies of all drawings and specifications reasonably necessary for the execution of the work.
- 3.2.5 The foregoing is in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9, and 11, respectively.

3.3 OWNER'S RIGHT TO STOP OR SUSPEND THE WORK

- 3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.
- 3.3.2 When there is no responsible agent to the Contractor on the work or if the Contractor fails to perform the work according to specifications, or if the Contractor does not follow permits under which the work is allowed to proceed, the Owner's Representative may order the work, or any part thereof, suspended and no extra payment will be due the Contractor for suspension on these grounds.
- 3.3.3 The Owner may, at any time and for any reason, terminate this Contract for convenience, in whole or in part by providing written notice to the Contractor. Upon receipt of such notice, the Contractor shall immediately cease work, secure the site, and take all reasonable steps to minimize costs. The Contractor shall be entitled to payment for:
 - 1. Work performed up to the termination date
 - 2. Reasonable demobilization costs
 - 3. Verified costs incurred due to termination
 - 4. No payment shall be made for anticipated profits or unperformed work.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

- 3.4.1 The Owner has the right, in cases of improper or imperfect performance of the work, or failure to prosecute the work to insure its completion within the time limits specified by the Contract Documents, and upon recommendation of the Owner's Representative that

sufficient cause exists to justify action, to give written notice to the Contractor and the Surety stating said default. If the Contractor does not remedy such default within ten (10) days after such notice if given, the Owner has the right to suspend all work by the Contractor. When the Contractor and Surety are notified that the Owner has elected to suspend the work, the Contractor shall cease to have the right to occupancy of the work site, and the Owner shall have the right to forthwith take possession of the work site. The Surety shall have the right to complete the Contract, but in the event that performance has not been commenced by the Surety within ten (10) days from the date of the notice of suspension, the Owner has the right to continue in the possession of and utilize, for the completion of the Contract, any and all materials, tools, equipment and plans which the Contractor has had delivered upon the site of the work, and to prosecute the work to the completion, either by force account or by Contract.

- 3.4.2 Expenditures made by the Owner in completing the work under the Contract and in payment of valid claims arising under the terms of the Contract shall be deducted from monies due or which would have become due the Contractor upon completion of the Contract. No claims for "extras" arising from the Owner's actions in completing the work will be allowed. The Contractor and Surety shall be liable and shall reimburse the Owner for any costs, in excess of the Contract amount, required to complete the work.

3.5 OWNER'S RIGHT TO CLEAN UP

- 3.5.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof including a reasonable charge for the efforts of Owner, its agents, contractors and/or employees to the Contractors responsible therefore as the Owner's Representative shall determine to be just.

3.6 OWNER'S USE OF COMPLETED PORTIONS

- 3.6.1 The Owner shall have the right to take possession of and use any completed or partially completed portions of the work prior to the contractual completion date for the project, but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract.

PART 4 - CONTRACTOR

4.1 DEFINITION

- 4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or his/her authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

- 4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Engineer and/or Owner's Representative any error, inconsistency, or omission

he may discover. The Contractor shall perform no portion of the work at any time without Contract Documents or, where required, reviewed Shop Drawings, Product Data or Samples for such portion of the work.

- 4.2.2 Construction Methods and Procedures: Certain methods and procedures may be specifically required by the Contract Documents. All other methods and procedures, which the Contractor uses to perform the work, are his/her sole responsibility.
- 4.2.3 The Contractor shall be responsible for performing the work items specified or shown in specifications and accompanying drawings issued as a part of its Contract and shall coordinate its work with that of other Contractors.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1 The Contractor shall supervise and direct the work, using his/her best skill and attention. He/she shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under the Contract.
- 4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his/her employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.
- 4.3.3 The Contractor shall not be relieved from his/her obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Owner's Representative in his/her administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

- 4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the work.
- 4.4.2 The Contractor shall at all times enforce strict discipline and good order among his/her employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

- 4.5.1 The Contractor warrants to the Owner, and the Owner's Representative that all materials and equipment furnished under this Contract will be new unused or un-reconditioned, unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and

quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.6 TAXES

- 4.6.1 The APDC is exempt from Federal and State sales taxes. Such taxes shall not be included in the contract amount or the price of Change Orders.

4.7 PERMITS, FEES, AND NOTICES

- 4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work, which are customarily secured after execution of the Contract, or which are legally required at the time bids are received.
- 4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations and lawful orders of any public authority bearing on the performance of the work.
- 4.7.3 It is the responsibility of the Engineer to make certain that the Contract Documents are in accordance with applicable laws, statutes, and building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he/she shall promptly notify the Engineer and Owner's Representative in writing, and any necessary changes shall be accomplished by appropriate modification.
- 4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer and/or Owner's Representative, he/she shall assume full responsibility, therefore, and shall bear all costs attributable thereto.

4.8 SUPERINTENDENT

4.8.1 The Contractor shall employ a competent full-time on-site superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be so confirmed by written request in each case. The Owner shall have the right to require replacement of the Superintendent.

4.9 PROGRESS SCHEDULE

- 4.9.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's, Engineer's, and Owner's Representative's information an estimated progress schedule for the work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the work. The progress schedule shall be developed in Critical Path Method (CPM) format utilizing current best practices. The schedule shall be developed utilizing the latest edition of Microsoft Project or Primavera scheduling software.
- 4.9.2 The Contractor shall prepare and submit a rolling three-week look-ahead schedule to the

Owner's Representative every Monday of each week of active construction work. Each schedule shall include:

1. Activities planned for the upcoming three weeks
2. Crew sizes and trades assigned
3. Material and equipment deliveries
4. Coordination with other trades and subcontractors
5. Identification of potential delays or constraints

The schedule shall be updated weekly and reflect actual progress. Failure to submit timely and accurate schedules may result in withholding of progress payments or other remedies as defined in this Contract.

4.9.3 As a prerequisite to the Application for Payment each month, the Contractor shall provide an update of the CPM schedule to the Owner's Representative which reflects actual progress to-date, and which forecasts the project completion date. If, in the opinion of the Owner's Representative, the updated Progress Schedule reflects significant delay in the project completion date, the Owner's Representative may require the Contractor to develop a Recovery Schedule. The Recovery Schedule shall show the methods the Contractor would execute to recover time lost, and to complete the project on time. Failure to submit timely either a monthly Progress Schedule, or a requested Recovery Schedule may result in withholding of progress payments or other remedies as defined in this Contract.

4.9.4 The Contractor will be required to attend and participate in a reoccurring bi-weekly Progress and Coordination meeting each month during active construction work. The contractor shall be prepared to discuss the status of the work, including progress made and the identification of potential delays or constraints to completing the project on time.

4.10 DOCUMENTS AND SAMPLES AT THE SITE

4.10.1 The Contractor shall maintain at the site for the Owner one record copy of all drawings, specifications, addenda, change orders, and other modifications, in good order and marked currently to record all changes made during construction, and reviewed shop drawings, product data and samples. These shall be available to the Engineer and/or Owner's Representative and shall be delivered to him for the Owner upon completion of the work.

4.10.2 The Contractor shall obtain at his/her expense one set of construction contract drawings in non-reproducible black and white prints, for the purpose of recording "as-built" conditions.

4.10.3 The Contractor shall be responsible for all survey work required for the location and construction of the work required to complete Record Drawings. Record Drawings shall, at a minimum, show the relative location by dimension with respect to each other of the final location of all work items.

4.10.4 It shall be the responsibility of the Contractor to mark each sheet of the non-reproducible drawings in sharp red pencil and to record thereon in a neat and current form, any and all approved field changes and conditions as they may occur. Sufficient detail shall be recorded

for the Owner to accurately locate the facilities following construction and restoration. A complete file of approved field sketches, diagrams, and other changes, as may become necessary during the progress of the work, shall also be maintained and attached to the record set of contract drawings. Record drawings shall be maintained current as the work progresses. The Owner's Representative will review the drawings before approving each progress payment and may withhold approval until such time as the drawings meet the above requirements. At completion of the work, each sheet of record prints, plus all approved field sketches and diagrams, shall be submitted to the Engineer for his/her approval and use in establishing a basis for semi-final payment.

- 4.10.5 Before semi-final payment, the Contractor shall deliver to the Owner's Representative the complete bound set of non-reproducible record drawings for the Owner's permanent files.

4.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 4.11.1 Shop drawings are drawings, diagrams, schedules, and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the work.
- 4.11.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the work.
- 4.11.3 Samples are physical examples, which illustrate materials, equipment, or workmanship, and establish standards by which the work will be judged.
- 4.11.4 The Contractor shall review, approve, and submit, with reasonable promptness and in such sequence as to not cause delay in the work or in the work of the Owner or any separate contractor, all shop drawings, product data and samples required by the Contract Documents.
- 4.11.5 By approving and submitting shop drawings, product data and samples, the Contractor represents that he/she has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he/she has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.
- 4.11.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's review of shop drawings, product data or samples under Subparagraph 2.2.12 unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written acknowledgment to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data, or samples by the Engineer's review thereof.
- 4.11.7 The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data or samples, to revisions other than those requested by the Engineer on previous submittals.

4.11.8 No portion of the work requiring submission of shop drawings, product data or samples shall be commenced until the submittal has been reviewed by the Engineer as provided in Subparagraph 2.2.12. All such portions of the work shall be in accordance with reviewed submittals.

4.12 USE OF SITE

4.12.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.13 CUTTING AND PATCHING OF WORK

4.13.1 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the work or to make its several parts fit together properly.

4.13.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner, or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor.

4.14 CLEANING UP

4.14.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his/her operations. At the completion of the work, he/she shall remove all his/her waste materials and rubbish from and about the project as well as all his/her tools, construction equipment, machinery, and surplus materials. Contractor shall use a hydraulically driven broom to clean all streets and roadways at the end of each workday.

4.14.2 If the Contractor fails to clean up at the completion of the work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.15 ROYALTIES AND PATENTS

4.15.1 The Contractor shall pay all royalties and license fees. He/she shall defend all suits of claims for infringement of any patent rights and shall save the Owner harmless from any loss including, but not limited to, attorney's fees on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer, or manufacturers is specified; but, if the Contractor has reason to believe that the design, process, or product specified is an infringement of a patent, he/she shall be responsible for such loss unless he/she promptly gives such information to the Owner's Representative. To save harmless provisions contained herein shall be additional to and shall not be interpreted to limit in any way the indemnification provisions contained in Section 4.16 below.

4.16 INDEMNIFICATION

4.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Engineer and the Owner's Representative against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this Paragraph 4.16.

4.16.2 In any and all claims against the Owner or the Engineer and/or Owner's Representative, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

4.17 HARASSMENT

4.17.1 The Contractor and its employees shall comply with all Local, State, and Federal regulations governing worker and employee conduct. The Contractor and his/her workers, employees, subcontractors, and their workers, etc., may not fraternize with local residents, or municipal personnel, or their representatives. At no time will it be appropriate to say anything derogatory or vulgar to any individuals. Harmful threats and harassment, verbal or otherwise, directed towards any individual will not be tolerated. If an incident of fraternizing or harassment arises, the Contractor will be directed to permanently remove the worker from the site and replace the worker at no additional cost to the Project.

PART 5 - SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative thereof. .

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents and means a Sub-subcontractor or an authorized representative thereof.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Owner's Representative in writing the names of the persons or entities (including, but not limited to, those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Owner's Representative will promptly reply to the Contractor in writing stating whether or not the Owner or the Owner's Representative, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Owner's Representative to reply promptly shall constitute notice of no reasonable objection.
- 5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner's Representative has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he/she has reasonable objection.
- 5.2.3 If the Owner or the Owner's Representative has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner or the Owner's Representative has no reasonable objection and no increase in the Contract Sum shall be allowed for any such substitution.
- 5.2.4 The Contractor shall make no substitution for any Subcontractor, person, or entity previously selected if the Owner or Owner's Representative makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

- 5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Engineer and the Owner's Representative. Said agreement shall preserve and protect the rights of the Owner and the Engineer and the Owner's Representative under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his/her Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3.1 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his/her Sub-subcontractors.

PART 6 - WORK BY OWNER OR BY SEPARATE CONTRACTORS**6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner reserves the right to perform work related to the project with his/her own forces, and to award separate contracts in connection with other portions of the project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he/she shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of his/her own forces and of each separate contractor with the work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall connect and coordinate his/her work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Owner's Representative any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his/her work, except as to defects, which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible, therefore.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend against such proceedings at the Contractor's expense, and if any judgement or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees, court or arbitration costs, fine or penalties, if any, which the Owner has incurred.

PART 7 - MISCELLANEOUS PROVISIONS**7.1 GOVERNING LAW**

- 7.1.1 This Contract shall be governed by, and construed in accordance with, the laws of the State of New York, determined without reference to conflicts of law principles. All proceedings with respect to this Contract or any other dispute between the parties hereto shall be brought in federal or state court within Albany County in the State of New York, and the Parties consent both to the personal and subject matter jurisdiction of any such court.

7.2 SUCCESSORS AND ASSIGNS

- 7.2.1 The Owner and the Contractor each binds himself, his/her partners, successors, assigns, and legal representatives to the other party hereto and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner. Any assignment made in violation hereof shall be deemed void.

7.3 WRITTEN NOTICE

- 7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail, to the last business address known to him who gives the notice.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

- 7.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if, and as required in the Bidding Documents or in the Contract Documents.

7.5 RIGHTS AND REMEDIES

- 7.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 7.5.2 No action or failure to act by the Owner, Engineer and/or Owner's Representative, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder or any subsequent breach thereunder, except as may be specifically agreed in writing.

7.6 TESTS

- 7.6.1 Where the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, by a third party Special Inspection and/or Testing firm, the Contractor shall give the Owner's Representative timely notice of its readiness so the Owner's Representative may procure, schedule, and observe such inspection, testing, or approval.
- 7.6.2 If the Engineer and/or Owner's Representative determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he/she will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Engineer and/or Owner's Representative additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.
- 7.6.3 Required certificates of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by him to the Owner's Representative and Engineer.
- 7.6.4 If the Owner's Representative is to observe the inspections, tests, or approvals required by the Contract Documents, he/she will do so promptly and, where practicable, at the source of the supply.

PART 8 - TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, the Contract Time is the number of calendar or working days shown in the Contract Documents representing the time allowed for the completion of work contemplated in the Contract.
- 8.1.2 The date of commencement of the work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement, or such other date as may be established therein.
- 8.1.3 The term day, as used in the Contract Documents, shall mean calendar days, Sundays and Holidays included, unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

- 8.2.1 Time is of the essence with respect to the performance of each of the parties' obligations stated within the Contract Documents.
- 8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He/she shall carry the work forward expeditiously with adequate forces

and shall complete the work within the Contract Time. No work shall begin prior to the date of commencement.

- 8.2.3 When the Contract Documents require completion of the Contract by a specific date, all work, including clean-up of the work site, must be complete by that date.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 The Owner's Representative or the Owner shall have the authority to immediately stop the work wholly or in part by written order for such period as he/she may deem necessary due to conditions considered unfavorable for the suitable prosecution of the work.
- 8.3.2 If the Contractor finds it is impossible to complete the work on or before the time specified for completion, he/she may make written request for an extension of time. He/she shall set forth fully in the request the reasons he/she believes justify the granting of the request.
- 8.3.3 Contractor agrees to make no monetary claim for delays, interferences or hindrances of any kind in the performance of this Agreement caused by any act or omission to act of the Owner or its employees or representatives and further agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work. The Owner may extend the contract time by Change Order for completion as appears reasonable and proper. The extended time for completion shall then be considered as in full force and effect as if it were the original time for completion.
- 8.3.4 Any claim for extension of time shall be made in writing to the Owner's Representative not more than twenty (20) days after the commencement of the delay; otherwise, it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.
- 8.3.5 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after written request is made for them, and not then unless such claim is reasonable.

8.4 FAILURE TO COMPLETE WORK ON TIME

- 8.4.1 Failure to complete the specified sections of the work within the time required by the Contract, including extensions granted thereto as determined by the Owner's Representative, shall entitle the Owner to deduct from the monies due, or to become due to the Contractor, an amount equal to the actual cost of the delay to the Owner, including those as outlined in Section 8.5 below.
- 8.4.2 Permitting the Contractor or Surety to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract.

8.5 LIQUIDATED DAMAGES

8.5.1 If the Contractor fails to achieve Substantial Completion by the Contract Completion Date, due to action or inaction of their own, as adjusted by approved Change Orders, the Contractor shall be liable for liquidated damages equal to the actual documented costs incurred by the Owner as a direct result of such delay. Recoverable costs may include, but are not limited to:

1. Extended project management and supervision
2. Additional site security or utilities
3. Rental or lease extensions for temporary facilities
4. Loss of use or revenue
5. Consultant or inspection fees

The Owner shall provide reasonable documentation of such costs. The Contractor shall not be liable for consequential damages or costs not directly attributable to the delay. Liquidated damages under this clause shall not be construed as a penalty.

PART 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the work under the Contract Documents.

9.2 APPLICATIONS FOR PAYMENT

9.2.1 At least ten (10) days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Owner's Representative an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner or the Owner's Representative may require.

9.2.2 Unless otherwise provided in the Contract Documents, partial payments may be made for some stored materials as follows and only if approved by the Owner in advance. Payments may be made on account of large quantities of materials or major equipment components not incorporated in the Work but delivered and suitably stored either at the site, or some other location agreed upon in writing with the Owner. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of paid bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.2.3 The Contractor warrants that title to all work, materials, and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens,

claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials, or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

- 9.2.4 When requested by the Owner's Representative, the Contractor shall furnish a breakdown of the actual quantities and unit prices used in preparing his/her bid price for each item in the proposal. The breakdown must be balanced and not contain prices which are proportionally higher for work to be completed first. The Owner's Representative reserves the right to order such changes as may, in his/her opinion, be necessary to balance such breakdown.

9.3 CERTIFICATES FOR PAYMENT

- 9.3.1 After the receipt of the Contractor's Application for Payment, the Owner's Representative will either issue a Certificate for Payment to the Owner, with a copy to the Contractor for such amount as the Owner's Representative determines is properly due or notify the Contractor in writing his/her reasons for withholding a certificate as provided in Subparagraph 9.5.1.

- 9.3.2 The issuance of a Certificate for Payment will constitute a representation by the Owner's Representative to the Owner, based on his/her observations at the site and the data comprising of the Application for Payment, that the work has progressed to the point indicated; that, to the best of his/her knowledge, information and belief, the quality of the work is in accordance with the Contract Documents.

9.4 PROGRESS PAYMENTS

- 9.4.1 At least ten (10) days before each progress payment falls due (but not more often than once a month) the Contractor will submit to the Owner's Representative a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Owner's Representative may reasonably require. Requests shall be submitted on AIA G702/703 or similar format.
- 9.4.2 If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect his/her interest herein, including applicable insurance.
- 9.4.3 The Owner's Representative will, within ten (10) days after receiving each partial payment estimate, either indicate in writing his/her approval of payment and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing his/her reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate.
- 9.4.4 The Owner shall act on partial progress estimates approved by the Owner's Representative on the succeeding regularly scheduled meeting.

- 9.4.5 The Owner shall retain ten percent (10%) of each progress payment until Substantial Completion. Upon achieving Substantial Completion, the retainage may be reduced to five percent (5%), with final release subject to completion of all punch list items and submission of closeout documents. The sum or sums withheld by the Owner shall not exceed ten percent (10%) of the value completed, unless a dispute arises between one prime contractor occasioned by the delays or actions of the second prime contractor. If such a dispute arises, additional retainage in the sum of one and one-half (1-1/2) times the amount of possible liability may be withheld until such time as a final resolution is agreed to by all parties.
- 9.4.6 After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.
- 9.4.7 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his/her Sub-subcontractors in a similar manner. The Contractor and all Subcontractors shall provide reasonable proof at the request of the Owner's Representative of timely payment of all sums due Subcontractors and/or Sub-subcontractors as required herein.
- 9.4.8 Neither the Owner or Owner's Representative shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.
- 9.4.9 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use, or occupancy of the project by the Owner, shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.5 PAYMENTS WITHHELD

- 9.5.1 The Owner's Representative may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary in his/her reasonable opinion to protect the Owner from loss on account of:
1. Defective work not remedied.
 2. Claims filed or reasonable evidence indicating probable filing of claims.
 3. Failure of the Contractor to make payments properly to the Subcontractor(s) or for labor, materials, or equipment.
 4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
 5. Damage to the Owner or another Contractor.
 6. Failure of the Contractor to comply with provisions of the Contract Documents

relating to the receipt of State and/or Federal aid for the project and after receiving notification from the Owner that said compliance is necessary.

7. Failure of the Contractor to provide a CPM Schedule Progress Update, and/or Recovery Schedule as requested by the Owner's Representative.

- 9.5.2 When the above grounds in Subparagraph 9.5.1 are removed, payment will be made for amounts withheld because of them.

9.6 PARTIAL ACCEPTANCE

- 9.6.1 Upon the request of the Owner pursuant to General Condition 3.6 or, when requested by the Contractor and upon specific approval of the Owner's Representative, prior to final inspection and acceptance, the Contractor may be relieved of maintenance of sections of the work which have been completed. Such partial acceptance and assumption of the maintenance by the Owner shall be covered by a written notice from the Owner's Representative to the Contractor, and such notice shall designate the sections of the work on which the Contractor is to be relieved of maintenance and shall also set forth the date upon which such notice will be effective.
- 9.6.2 The assumption of maintenance by the Owner, however, will not relieve the Contractor of any responsibility for defective workmanship, or materials, or for damages caused by his/her own operations.
- 9.6.3 Such action will not be construed to be a final inspection or acceptance of any part of the work, or waiver of any legal rights.

9.7 FINAL COMPLETION

- 9.7.1 The Owner's Representative will make an inspection of the work included in the Contract as soon as practical after notification by the Contractor that the entire work has, in its opinion, been completed and final cleanup performed.
- 9.7.2 Should the inspection disclose any work, in whole or in part, as being unsatisfactory, the Owner's Representative will give the Contractor the necessary instructions for correction of the same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made. The Contractor shall bear all costs of re-inspection(s).
- 9.7.3 When all work included in the Contract has, in the opinion of the Owner's Representative, been completed, the Engineer will certify the date of completion of the work.

9.8 LIEN WAIVERS AND CLAIM RELEASE

- 9.8.1 Neither the final payment nor any part of the retained percentage shall become due until the Contractor, delivers to the Owner (1) a complete release of any claims arising out of the Contract, and (2) an affidavit which certifies that all labor and materials for which a lien could

be filed, have been paid in full.

- 9.8.2 Contractor does hereby covenant, promise and agree, that no mechanic's lien or other lien of any kind whatsoever shall be filed or maintained against the project or the property of the Owner by any subcontractor, materialmen, or laborer for work done or materials furnished under the Contract or by any other party acting through or under them or any of them for and above the project or any part thereof. The Contractor shall, at his/her own expense by bonding or otherwise, secure the prompt discharge of any liens which may be filed against the project as a result of this Contract.

9.9 FINAL ACCEPTANCE

- 9.9.1 When all of the Contractor's obligations under the Contract have, in the opinion of the Engineer, the Owner's Representative, and the Owner, been fully satisfactorily performed, the Owner's Representative will provide written notification to the Contractor establishing the final acceptance of the Project, and the date thereof.

9.10 FINAL PAYMENT

- 9.10.1 When the project has been finally completed and accepted the Contractor shall then be paid the entire sum found to be due after:

1. deducting all previous payments and all amounts to be deducted under the provisions of the Contract
2. delivery to and acceptance by the Engineer and Owner's Representative of the Record Drawings
3. acceptance of releases and affidavits as required under Paragraph 9.9 FINAL ACCEPTANCE

- 9.10.2 All prior estimates and payments shall be subject to correction in the final estimate and payment.

- 9.10.3 The acceptance by the Contractor of the "Final Payment" provided for in the Contract shall operate as, and shall be, a release to the Owner and its representatives from all claims by the Contractor for anything done or furnished for or relating to the work, or for any act or neglect of the Owner, or of any person relating to or affecting the work.

- 9.10.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

1. Unsettled liens,
2. Failure of the work to comply with the requirements of the Contract Documents, or
3. Terms of any warranties required by the Contract Documents.

PART 10 - PROTECTION OF PERSONS AND PROPERTY**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- 10.1.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.1.3 The Contractor shall designate a responsible member of his/her organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.

10.2 EMERGENCIES

- 10.2.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his/her discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the work.
- 10.2.2 In the event it becomes necessary for the Owner to perform emergency maintenance and protection, which is the responsibility of the Contractor under the Contract Documents, the cost of such work shall be billed to the Contractor and deducted from his/her final payment if not paid.

10.3 PROTECTION OF WORK-PUBLIC AND PRIVATE

- 10.3.1 During performance and up to the final acceptance of the work, the Contractor shall be under an absolute obligation to protect finished and unfinished work against any damage, loss or injury; and in the event of such damage, loss or injury he/she shall promptly replace or repair such work, whichever the Owner's Representative shall determine to be preferable.
- 10.3.2 All private properties shall be fully protected by the Contractor. All trees, bushes, shrubs, sod, etc., on private property damaged by the Contractor shall be repaired or replaced by the Contractor at no cost to the private owner, and to the satisfaction of the Owner's Representative.
- 10.3.3 Whenever the work is to be prosecuted through private property for which the Owner has obtained an easement, the Contractor must abide fully with the terms of the easement, a copy of which is on file with the Owner.

10.4 CLAIMS FOR DAMAGES – PERSONAL INJURY / PROPERTY DAMAGE

- 10.4.1 Should either party to the Contract suffer injury or damage to person or property because of

any act or omission of the other party or of any of his/her employees, agents or others for whose acts he/she is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

10.5 STREET BARRICADES, SIGNS, AND WARNING DEVICES

10.5.1 The Contractor shall be responsible for the erection and maintenance of all barricades, lights, and signs necessary for public safety and convenience in accordance with all applicable requirements. Adequate protection shall be provided around all openings wherever required to safeguard the work for the public. In general, all hazards within the limits of the work or on detour around the work must be marked with well-painted, well-maintained barricades, reflectors, electrical lights, flashers, and warning and directional signs in sufficient quantity and size adequate to protect life and property. These safeguards shall be moved, changed, increased, or removed as required during the progress of the work to meet changing conditions.

10.5.2 When a street or road is closed to through traffic, barricades shall be placed at the adjacent intersections as well as at the locations of the obstruction. Detour signs shall be attached to the barricades at the adjacent intersections. Detour signs shall be adequately illuminated and/or reflectorized so as to be clearly visible at all times. All signs shall conform to the current New York State Manual of Uniform Traffic Control Devices. The Owner's Representative reserves the right to require that "snow fence" be installed at locations where streets or alleys are closed for the full width of the roadway. Barricades shall be maintained in rigidly assembled condition. All warning devices shall be kept clean and in good repair so as to be readily discernible at all times.

10.6 ACCESS TO PROPERTIES AND FACILITIES-PUBLIC AND PRIVATE

10.6.1 The Contractor shall maintain vehicular traffic as specified in the Contract Documents or as otherwise directed by the Owner's Representative. The Contractor shall neither shut off, nor unnecessarily interfere with, either pedestrian or vehicular access to property without the consent of the Owner's Representative.

10.6.2 Whenever the Contractor's operations obstruct or endanger a traffic lane, and no marked detour has been provided, he/she shall furnish a flagman to direct traffic through or around the congested area. The Owner's Representative shall have the right to require additional flagmen as he/she may deem necessary.

10.6.3 Access must always be maintained to fire hydrants, fire alarms and police call boxes, water and gas gate valves, catch basins, and sewer, water, utility, and other manholes. Whenever access to any such facility shall have been obstructed or interfered with during the progress of the work, the Contractor must immediately remove at his/her own expense such obstruction or interference.

10.6.4 The Contractor shall be responsible for immediate removal of snow from those sections of streets or project site areas which he/she has obstructed or occupied.

10.7 DRAINAGE

- 10.7.1 Drainage must not be obstructed at any time. When necessary, a continuous pipe or timber drain, of ample capacity, shall be laid to carry off the storm water. Such pipe shall be kept open and free of obstruction.
- 10.7.2 All storm or ground water, which is to be removed from the site of the work, must be conveyed to an inlet of a storm sewer, or, when so approved by the Owner's Representative, to some other point of disposal. All sanitary sewage must be conveyed by closed pipe or hose to an inlet of a sanitary sewer, or when so approved by the Owner's Representative, to some other point of disposal. Proper precautions must be taken to prevent excessive quantities of clay, sand, or silt from entering existing sewers or drainage channels. All existing structures which are disturbed must be restored to a condition at least equal to their original condition and to the satisfaction of Owner's Representative.

PART 11 - LIABILITY AND INSURANCE

11.1 HOLD HARMLESS

- 11.1.1 The Contractor shall hold harmless the Owner and Engineer and the Owner's Representative, from any claims and from any and all damages to the property of the Owner, whose name is given on the Contract Document cover, or any third part, or personal injuries sustained by anyone as the result of the operations of the Contractor on this Project.
- 11.1.2 The Contractor and the Surety will be held responsible for and shall save the Owner and Engineer and Owner's Representative harmless from all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds and private grounds, or which may result therefrom, or which may result in any way from the negligence or carelessness of the Contractor, his/her agents, employees or workman; or by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work; and they shall indemnify the Owner and Engineer and Owner's Representative for and save it harmless from all claims and liabilities, actions and causes of action, and liens for materials furnished or labor performed in the construction or execution of the work, and from all costs, charges and expenses incurred in defending such suits or actions, and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, invention or improvement in tools, equipment or plant or any process, device, or combination of devices used in the construction of the work.
- 11.1.3 The indemnification hold harmless and/or save harmless provisions contained above shall not be interpreted to limit in any way the indemnification contained in Section 4.16 above.

11.2 INSURANCE – CONTRACTOR'S LIABILITY INSURANCE

- 11.2.1 The Contractor shall purchase from and maintain a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect

the Contractor from claims that may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them. Insurance requirements are as detailed in the RFP.

All insurance policies shall name the Owner, the Architect/Engineer, and the Owner's Representative, as additional insured on a primary and non-contributing basis. A copy of the Additional Insured Endorsement must be submitted with Certificate of Insurance.

The Contractor hereby agrees to deliver to the Owner, on or before the execution of this Agreement and prior to any equipment or personnel being brought onto the site of the Work or the Project site, certified copies of all insurance policies required by and in compliance with this Contract, procured by the Contractor. Each insurance carrier for the contractor and subcontractor(s) will complete and submit a Certificate of Insurance on the standard ACORD form, which is satisfactory to the Owner and Representative evidencing the required coverages with limits not less than those specified in the Contract Documents. The coverage afforded under any insurance policy obtained shall be primary to any valid and collectible insurance carried separately by any of the Indemnities naming each of them Additional Insureds. Further, all policies and Certificates of Insurance shall expressly provide that no less than sixty (60) days prior written notice shall be given to the Owner and Owner's Representative in the event of material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy as evidenced by such certificate copy of Certificate of Insurance. If the initial insurance expires prior to the end of the guarantee period, renewal certificates, in the form identical to the attached Certificate of Insurance, shall be furnished at least thirty (30) days prior to the date of expiration.

11.2.2 If the Contractor fails to purchase and maintain any insurance required by the Contract Documents, Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

11.2.3 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

11.3 CONTRACT BONDS

11.3.1 Contract Bonds are as detailed in the RFP. The bonds required herein shall be provided on the forms contained in these contract specifications or where no such form is provided in these contract specifications, on forms approved by the Owner. The bonds shall be T-listed in the Federal Registry. The amount of the bonds issued for the awarded Contract shall be the full amount of the Contract and shall be adjusted to incorporate all extras, credits, and change orders through a final payment.

11.4 WEEKLY PAYROLL RECORDS

11.4.1 The Contractor shall submit weekly a copy of all payrolls to the Owner's Representative. The Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than

those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic including apprentices and trainees, conform with the work he/she performed.

PART 12 - CHANGES IN THE WORK

12.1 CHANGE ORDERS

- 12.1.1 A Change Order is an agreement signed by the Owner, Contractor, and the Engineer, issued after execution of the Contract, authorizing a change in the work involving an adjustment in the contract sum and / or the contract time. The contract sum and the contract time may be changed only by a fully executed Change Order.
- 12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the contract sum and the contract time being adjusted accordingly. All such changes in the work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.
- 12.1.3 No extra work of any kind will be allowed unless ordered in writing by the Engineer and/or Owner's Representative prior to commencing work which will entail such extras. No verbal orders shall be construed as authorizing or laying the foundation for extra compensation for either work or materials, or for extra contract time. Verbal orders or suggestions may be given from time to time, as to the performance of the work, but in case they appear to the Contractor to involve extra work for which he/she should receive extra compensation, he/she must ask for a written Change Order.
- 12.1.4 The Owner's Representative will have authority to order minor changes in the work not involving adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the Contract Documents. Such changes will be affected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.
- 12.1.5 In the event of any disagreement as to the amount of work involved under any authorized order for extra work, it is hereby agreed that the decision of the Owner's Representative shall be binding and conclusive.
- 12.1.6 If the Owner deems it proper or necessary in the execution of the work to make any alteration, which will increase or diminish the quantity of labor or materials, or the cost of the work, such alteration shall not annul or vitiate the Contract or agreement, nor release the Surety. The Contractor shall furnish the necessary labor, material, etc., to complete the Contract as altered within the time limit originally specified or as extended by the Owner's Representative. Additions or deductions need not be accepted by the Contractor if the total cost of the additions or deductions exceeds twenty percent (20%) of the total cost of the project as originally bid by the Contractor. The value of the work so added or omitted shall be added or deducted from the amount otherwise due the Contractor, as the case may be, and shall be determined in accordance with the methods described in Subparagraph 12.1.7.

12.1.7 The method of determining the basis of payment or credit resulting from such altered work shall be:

1. For such items where the unit prices have been established in the Contract, the unit prices may, at the Owner's election, be utilized.
2. For such items for which unit prices have not been established in the Contract, by agreement with the Contractor following a request by the Owner's Representative for a written quotation for the item of work to be performed or the elimination of the work. Contractor shall submit quotations, which are properly itemized and supported by sufficient substantiating evidence to permit evaluation by the Owner's Representative.
3. If an agreement cannot be made between the Contractor and the Owner's Representative for items of work for which unit prices are not set forth in the Contract, then the value shall be determined by using the actual cost of labor, materials and use of equipment to be determined as the work progresses and as outlined in Paragraph 12.2 plus overhead and profit as outlined in Paragraph 12.3.

12.2 ACTUAL COST

12.2.1 Actual cost of labor and material shall be defined as the amount paid for the following items, to the extent determined reasonable and necessary.

1. Materials

Cost of materials delivered to the job site for incorporation into the Contract work.

2. Wages

Wages paid to workmen and foremen and wage supplements paid to labor organizations in accordance with current labor agreements.

3. Statutory Benefits

Premiums or taxes paid by the Contractor for workmen's compensation insurance, unemployment insurance, FICA tax, and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.

4. Sales Tax

Sales taxes paid as required by law, unless the Owner is exempt from Federal, State, and local sales tax.

5. Equipment Rental

Allowance for use of construction equipment (exclusive of hand tools and minor equipment), as approved for use by the Owner's Representative. The rate on self-owned equipment used for periods of under one (1) week will be the Associated Equipment Distributor's published monthly rate divided by twenty two (22) days to establish a daily

rate and divided again by hours to establish an hourly rate. Equipment used for periods of five (5) days or more, will be billed at a rate equal to forty five percent (45%) of the published monthly rate. In the alternative, the Owner's Representative may approve for reimbursement at a rate representing the allowable costs of ownership.

6. Self-Owned Equipment

Self-owned equipment is defined to include equipment rented from controlled or affiliated companies. Rented equipment will be paid for at the actual rental cost. Gasoline, oil, and grease required for operation and maintenance will be paid for at the actual cost. When, in the opinion of the Contractor, and as approved by the Owner's Representative, suitable equipment is not available on the site, the moving of said equipment to and from the site will be paid for at actual cost.

7. Documentation and Verification

Claims for such work will not be considered unless the Contractor presents to the Owner's Representative a daily itemized statement in duplicate of the hours of labor, quantities of materials, etc. upon which payment is to be based. The Owner's Representative will check such amounts daily and will retain the original and return the copy to the Contractor. The approval of such items by the Owner's Representative shall not in itself, however, be construed as authorizing or accepting such claims. No claims will be considered until the original bills, receipts, or vouchers have been furnished to the Owner's Representative by the Contractor.

12.3 OVERHEAD AND PROFIT

12.3.1 Overhead shall be defined as an allowance to compensate for all costs, charges, and expenses, direct or indirect, except for the actual cost of labor and materials as defined by Subparagraph 12.2.1. Overhead shall be considered to include, but not be limited to, insurance (other than mentioned in Subparagraph 12.2.1) bond or bonds, field and office supervisors and assistants above the level of foreman, use of small tools and minor equipment, incidental job burdens, general office expense, etc.

12.3.2 The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the two following paragraphs, in reference to Subparagraph 12.1.6.

12.3.3 If the work is done directly by the Contractor, overhead in an amount of five percent (5%) may be added if method 12.1.6.2 or 12.1.6.3 is used, and to the cost of labor and materials plus overhead, there may be added ten (10%) percent for profit. The percentages for overhead and profit may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the percentages set forth in this paragraph and in the paragraph below.

12.3.4 No percentages for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay.

12.3.5 If the work is done by a Subcontractor, Subcontractor's overhead in the amount of five percent (5%) may be added to cost of labor and materials if method 12.1.6.3 is used and to

the cost of labor and materials plus overhead, there may be added ten percent (10%) for the Subcontractor's profit. To this amount there may be added an amount not exceeding ten percent (10%) for the Contractor's combined overhead and profit. No percentage for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay.

12.4 CONCEALED CONDITIONS

- 12.4.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the contract sum shall be equitably adjusted by Change Order upon claim by either party made within twenty (20) days after the first observance of the conditions.

12.5 CLAIMS FOR ADDITIONAL COST

- 12.5.1 If the Contractor wishes to make a claim for an increase in the contract sum, he/she shall give the Owner's Representative written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the contract sum, it shall be determined by the Owner's Representative. Any change in the contract sum resulting from such claim shall be authorized by Change Order.
- 12.5.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.5.1.
- 12.5.3 The parties mutually waive claims against each other for consequential damages arising out of or in connection with the Project.
- #### 12.6 CONTINUING CONTRACT PERFORMANCE
- 12.6.1 Pending final resolution of a Claim or a disputed determination by the Owner's Representative, the Contractor shall proceed diligently with the performance of the Contract, and the Owner shall continue to make payments in accordance with the Contract Documents.

12.7 DISPUTE RESOLUTION

- 12.7.1 The Owner's Representative shall serve as the decision maker for all disputes arising out of or in connection with this Agreement.

PART 13 - UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

- 13.1.1 All materials and each part or detail of the work shall be subject at all times to inspection by the Owner's Representative or his/her authorized representatives, and the Contractor will be held strictly to the true intent of the specifications in regard to quality of materials, workmanship, and the diligent execution of the Contract. Such inspection may include mill, plant, or shop inspection, and any material furnished under these specifications is subject to such inspection. The Engineer and/or Owner's Representative or his/her representatives shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is determined by the Owner's Representative or his/her representative, to make a complete and detailed inspection.
- 13.1.2 If any portion of the work should be covered contrary to the request of the Engineer and/or Owner's Representative or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer and Owner's Representative, be uncovered for his/her observation and shall be replaced at the Contractor's expense.
- 13.1.3 The Contractor shall, if the Engineer and/or Owner's Representative requests, remove or to uncover such portion of the finished work as the Engineer and/or Owner's Representative may direct before the final acceptance of the same. After the examination, the Contractor shall restore said portion of the work to the standard required by the specifications. If the work thus exposed or examined proves acceptable, the expense of uncovering and/or replacing of the parts removed shall be paid for as extra work; but, if the work so exposed or examined is unacceptable, the expense of uncovering and/or removing and replacing of the same in accordance with the specifications shall be borne by the Contractor.

13.2 CORRECTION OF WORK

- 13.2.1 The Contractor shall promptly correct all work rejected by the Owner's Representative as defective or as failing to conform to the Contract Documents whether observed before or after substantial completion and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Architect's/Engineer's additional services made necessary thereby.
- 13.2.2 If, within one (1) year after the date of substantial completion of the work or designated portion thereof, or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner's Representative to do so

unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 All materials not conforming to the requirements of the Contract Documents shall be considered defective, and all such materials, whether in place or not, shall be rejected and shall be removed from the work by the Contractor at his/her expense. Upon failure on the part of the Contractor to comply with any order of the Owner's Representative relative to the provisions of this article, the Owner's Representative shall have authority to remove and replace such defective material and to deduct the cost of removal and replacement from any monies due or which may become due the Contractor.

13.2.4 The Contractor shall promptly remove from the premises all materials condemned by the Owner's Representative as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly re-execute his/her own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other Contractor(s) destroyed or damaged by such removal or replacement.

13.2.5 If the Contractor does not remove such condemned work and materials within ten (10) days after written notice, the Owner may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days time thereafter, the Owner may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceeds thereof, after deducting all the costs and expense that should have been borne by the Contractor, including compensation for the Architect's/Engineer's and Owner's Representative additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor, and an appropriate change order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one (1) year after the date of final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his/her obligations other than specifically to correct the work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming work, he/she may do so instead of requiring its removal and correction in which case a Change Order will be issued to reflect a reduction in the contract sum where appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.