

---

## **SECTION VI**

---

GENERAL CONDITIONS

## GENERAL CONDITIONS

For

### Construction

#### INDEX TO THE ARTICLES OF THE GENERAL CONDITIONS

DEFINITIONS	CHANGES IN CONTRACT PRICE
EXECUTION OF DOCUMENTS	CHANGE OF CONTRACT TIME
CORRELATION, INTERPRETATION AND INTENT OF DOCUMENTS	LIQUIDATED DAMAGES
AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS	WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.
BONDS AND INSURANCE	PAYMENTS AND COMPLETION.
CONTRACTOR'S RESPONSIBILITIES	SUSPENSION OF WORK AND TERMINATION.
WORK BY OTHERS	ARBITRATION.
OWNER'S RESPONSIBILITIES	ENVIRONMENTAL REQUIREMENTS.
ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION	MISCELLANEOUS.
CHANGES IN THE WORK	

**1.00 DEFINITIONS.** The Owner, the Contractor and the Engineer, are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1. ADDENDA.** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed.
- 1.2. AGREEMENT.** The contractual agreement between the Contractor and the Owner.
- 1.3. APPLICATION FOR PAYMENT.** The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents..
- 1.4. BID.** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.5. BIDDER.** Any person, firm, or corporation submitting a Bid for the Work.
- 1.6. BOARD.** The City of Bloomington Utilities Service Board.

- 1.7. BONDS.** Bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.
- 1.8. CALENDAR DAY.** Every day shown on the calendar.
- 1.9. CHANGE ORDER.** A written order to the Contractor signed by the Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.
- 1.10. CONTRACT.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and the Contractor, (2) between the Owner and a Subcontractor or Sub subcontractor, or (3) between any persons or entities other than the Owner and Contractor.
- 1.11. CONTRACT DOCUMENTS.** The Agreement, Addenda (whether issued prior to the opening of Bid or the execution of the Agreement), Change Orders issued by the Owner or Engineer, Invitation to Bidders, Instructions to Bidders, Proposal, Non-Collusion Affidavit, Questionnaire, Contractor's Bid, the Bonds, Employment Requirements and Wage Rates, Notification Procedures, General Equipment Stipulations, the Notice of Award, the Notice to Proceed, these General Conditions, the Special Conditions, the Specifications, Drawings, and Modifications.
- 1.12. CONTRACT PRICE.** The total amount payable to the Contractor under the Contract Documents.
- 1.13. CONTRACT TIME.** The number of days stated in the Agreement for the completion of the Work, computed as provided in these General Conditions; or by the date set forth in the Agreement.
- 1.14. CONTRACTOR.** The person, firm, or corporation with whom the Owner has executed the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. The relationship of the Contractor to the Owner shall be that of an independent contractor.
- 1.15. DAY.** A calendar day of twenty-four hours measured from midnight to the next midnight.
- 1.16. DATE OF CONTRACT.** The date written in the first paragraph of the Contract Agreement.
- 1.17. DRAWINGS OR PLANS.** The graphic and pictorial portions of the Contract Documents, wherever located or whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.18. ENGINEER.** The Traffic and Transportation Engineer (herein after "City Engineer", or "Engineer"), person, firm, or corporation named by the Owner "the City of Bloomington", or the duly authorized agents of the Engineer, acting within the scope of the duties entrusted to them.

- 1.19. FIELD ORDER.** A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 1.20. MODIFICATION.** (a) A written amendment of the Contract Documents signed by both parties. (b) A Change Order. (c) A written clarification or interpretation issued by the Engineer. (d) A written order for a minor change or alteration in the Work issued by the Engineer. A Modification may be issued only after execution of the Agreement.
- 1.21. NOTICE OF AWARD.** The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
- 1.22. NOTICE TO PROCEED.** A written notice given to the Contractor by the Owner (with a copy to the Engineer) fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform his or her obligations under the Contract Documents.
- 1.23. OWNER.** The City of Bloomington Utilities named and designated in the Agreement as "Owner" acting through its Utilities Service Board and its authorized agents. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to the City of Bloomington Utilities Department, 600 E. Miller Drive, Bloomington, Indiana, 47401.
- 1.24. PROGRESS SCHEDULE.** A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
- 1.25. PROJECT.** The total construction of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by the Owner or by separate contractors.
- 1.26. RESIDENT PROJECT REPRESENTATIVE.** The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
- 1.27. RESPONSIBLE BIDDER.** One who is fully capable of performing the contract requirements and who has the integrity and reliability to insure faithful performance.
- 1.28. RESPONSIVE BIDDER.** One who has submitted a Bid conforming in all material respects to the Contract Documents.
- 1.29. SHOP DRAWINGS.** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.
- 1.30. SPECIFICATIONS.** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work, and performance of related services.

**1.31. SUBCONTRACTOR.** An individual, firm, or corporation having a direct contact with the Contractor or with any other Subcontractor for the performance of a part of the Work to a special design at the site, but does not include a firm which merely furnishes material. All Subcontractor's performing work having a value over \$10,000.00 must be approved prior to performing any work under this contract agreement. Any work performed without prior approval will not be compensated for.

**1.32. SUBSTANTIAL COMPLETION.** The date as determined by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such determination, the date of final completion.

**1.33. WORK.** Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to, or undertaken by, the Contractor under the Contract Documents, including all labor, materials, equipment, and other incidentals, and the furnishing thereof.

**1.34 WORK CHANGE DIRECTIVE.**—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

### **1.35. MISCELLANEOUS DEFINITIONS**

**1.35.1. AS ORDERED, AS DIRECTED, AS REQUIRED, AS PERMITTED, AS ALLOWED.** The order, directions, requirement, permission, or allowance of the Owner or Engineer is intended only to the extent of judging compliance with the Contract Documents. The terms do not imply that the Owner or Engineer has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision is the sole responsibility of the Contractor.

**1.35.2. REASONABLE, SUITABLE, ACCEPTABLE, PROPER, SATISFACTORY.** The terms reasonable, suitable, acceptable, proper, and satisfactory mean such to the Owner or Engineer and are intended only to the extent of judging compliance with the Contract Documents.

**1.35.3. UNDERSTOOD AND AGREED.** Whenever in these Contract Documents the expression "it is understood and agreed" or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract Agreement.

## **2.0. EXECUTION OF AGREEMENT.**

**2.1. EXECUTION OF AGREEMENT.** The Agreement and other Contract Documents will be executed as set forth in the Special Conditions.

**2.2. DELIVERY OF BONDS AND EVIDENCE OF INSURANCE.** When the executed Agreements are delivered to the Owner, the Contractor shall also deliver to the Owner such Bonds and evidence of insurance as he or she may be required to furnish in accordance with the Agreement.

**2.3. COPIES OF DOCUMENTS.** The Owner, upon request from the Contractor, shall furnish to the Contractor the number of copies of the Contract Documents set forth in the Special Conditions or a minimum of 1 set of complete documents.

**2.4. CONTRACTOR'S PRE-AWARD REPRESENTATIONS.** The Contractor represents that Contractor has familiarized themselves with, and assumes full responsibility for having familiarized themselves

with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that the Contractor has correlated their study, observations and site visits with the requirements of the Contract Documents. The Contractor also represents that the Contractor has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as the Contractor deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that the Contractor has correlated the results of all such data with the requirements of the Contract Documents.

- 2.5. COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED.** Unless otherwise provided in the SPECIAL CONDITIONS, the Contractor will be expected to start active and continuous work on the contract within fifteen (15) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed unless this time is waived and mutually agreed upon and indicated on the Notice to Proceed. If a delayed starting date is indicated in the proposal, the fifteen (15) calendar day limitation shall be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any contract is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.
- 2.6. STARTING THE PROJECT.** The Engineer shall be notified at least three (3) days in advance of the date on which the work is expected to begin. Should the prosecution of the work for any reason be discontinued, the Engineer shall be notified at least twenty-four (24) hours in advance of resuming operations.
- 2.7. BEFORE STARTING CONSTRUCTION.** Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall at once report in writing to the Engineer any conflict, error, or discrepancy which the Contractor may discover. However, Contractor shall not be liable to the Owner or Engineer for the Contractor's failure to discover any conflict, error, or discrepancy in the Drawings or Specifications.
- 2.8. SUBMISSION OF SCHEDULES.** Within ten (10) days after delivery of the executed Agreement by the Owner to the Contractor, the Contractor shall submit to the Engineer for review, an estimated progress schedule that shall be in 'Critical Path' format and indicating the starting and completion dates of the various stages of the Work, and a preliminary schedule of Shop Drawing submissions and other specified schedules. The 'Critical Path' schedule must include all possible overlapping work that can be accomplished should one action or function not be available or accessible to the contractor in order to show that the Contractor's interrelated activities that will control the work path to complete the project within the time limits set forth for the project. Contracts with fewer than sixty (60) calendar days completion time, fewer than thirty-five (35) work days, or fewer than sixty (60) days between the date of the notice to proceed and the completion date do not need to submit a progress schedule. The progress schedule may be used as a basis for establishing major construction operations and as a check on the progress of the work. The Engineer shall be notified at least three (3) days in advance of the date on which the work is expected to begin. Sufficient materials, equipment, labor shall be provided by the Contractor to meet the progress schedule (if

required) and to guarantee the completion of the project in accordance with the plans and specifications.

**3.00. CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS.** It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the Owner and the Contractor. They may be altered only by a Modification.

The Contract Documents are complementary. What is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, or discrepancy in the Contract Documents, the Contractor shall call it to the Engineer's attention in writing at once. Before proceeding with the Work affected thereby, the Contractor shall not be liable to the Owner or Engineer for their failure to discover any conflict, error or discrepancy in the Specifications or Drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

In case of discrepancy, and subject to the terms of the **AGREEMENT** between Owner and Contractor, calculated dimensions will govern over scaled dimensions; plans will govern over specifications; special conditions will govern over the plans and specifications. The instructions to Bidders and the description of the pay items listed in the itemized proposal will govern over plans, specifications, and special conditions. The precedence outlined herein shall not absolve the Contractor of their responsibility with regard to errors and omissions, or from the Contractor's requirement to follow all IOSHA, OSHA, any local safety ordinances, and general good construction practices.

Advantage shall not be taken of any apparent error or omission in the plans or specifications. In the event such an error or omission is discovered, the Engineer shall be notified immediately in writing. Such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications will then be made.

**4.0. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS.**

**4.1. AVAILABILITY OF LANDS.** The Owner shall furnish, as indicated in the Contract Documents and not later than the date of the Notice to Proceed, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for use by the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise specified in the Contract Documents. If the Contractor believes that any delay in the Owner's furnishing these lands or easements entitles the Contractor to an extension of the Contract Time, the Contractor may make a claim therefore as provided in these General Conditions.

**4.2. PHYSICAL CONDITIONS; SURVEYS AND REPORTS.** Refer to **Instructions to Bidder**. For identification of those surveys and investigation reports of subsurface and latent physical conditions at the Project site or otherwise affecting performance of the Work which have been relied upon by the Engineer in preparation of the Drawings and Specifications, refer to **SPECIAL CONDITIONS**.

**4.3. UNFORESEEN PHYSICAL CONDITIONS.** The Contractor shall promptly notify the Owner and Engineer in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Engineer will promptly investigate those conditions and advise the Owner in writing if further surveys or subsurface tests are necessary. Promptly thereafter, the Owner shall obtain the necessary additional surveys and tests and furnish copies to the Engineer and Contractor. If the Engineer finds that the results of such surveys or tests indicate

that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by the Contractor, a Change Order shall be issued incorporating the necessary revisions.

**4.4. REFERENCE POINTS.** The Owner shall provide engineering surveys for construction to establish reference points which in the Owner's judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for surveying and laying out the Work (unless otherwise provided in the Special Conditions), and shall protect and preserve the established reference points and shall make no changes or reallocations without the prior written approval of the Owner. The Contractor shall report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor shall replace and accurately relocate all reference points so lost, destroyed or moved at the Contractor's expense.

## **5.0. BONDS AND INSURANCE.**

**5.1. PERFORMANCE, PAYMENT AND OTHER BONDS.** When Contractor delivers the executed counterparts of the **AGREEMENT** to Owner, the Contractor shall furnish a Performance Bond, Payment Bond, and other Bonds specified in **AGREEMENT** as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. The Performance Bond shall be in an amount at least equal to *100%* of the Contract Price, unless otherwise listed in **SUPPLEMENTARY CONDITIONS**. The Payment Bond shall also be in an amount at least equal to *100%* of the Contract Price, unless otherwise listed in **SUPPLEMENTARY CONDITIONS**. Bonds shall be executed on the forms (when provided) included in the Contract Documents and with such sureties as are licensed to conduct business in the state of Indiana and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall have an "A" minimum rating of performance and a financial rating strength of five times the Contract Price, all as stated in "Best's Key Rating Guide, Property-Liability". Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond.

**5.2. TERMINATION OF SURETY.** If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated or revoked in any state where any part of the Project is located, the Contractor shall within five (5) days thereafter substitute another Bond and surety, both of which shall be acceptable to the Owner.

**5.3. CONTRACTOR'S LIABILITY INSURANCE.** The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims under worker's compensation laws, disability benefit laws, or similar employee benefit laws, from claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees, and claims insured by personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than his or her employees including claims insured by personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from the Contractor's operations under the Contract Documents, whether such operations be by Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the specific coverage's and be written for not less than any limits of liability and maximum deductibles specified in the



Supplementary Conditions or required by law, whichever is greater, shall include contractual liability insurance and shall include the Owner and Engineer as additional insured parties. Before starting the Work, the Contractor shall file with the Owner and Engineer certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least fifteen (15) days prior written notice has been given to the Owner and Engineer.

## **6.0. CONTRACTOR'S RESPONSIBILITIES.**

**6.1. SUPERVISION AND SUPERINTENDENCE.** The Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

**6.2. RESIDENT SUPERINTENDENT.** The Contractor shall keep on the Work site at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Owner and Engineer. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

**6.3. LABOR, MATERIALS AND EQUIPMENT.** The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of the Work.

All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the contract Documents.

The Contractor shall be fully responsible for all acts and omissions of the Contractor's Subcontractors and of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor. Nothing in the Contract Documents shall create any contractual relationship between the Owner or Engineer and any Subcontractor or other person or organization having a direct contact with the Contractor, nor shall it create any obligation on the part of the Owner or Engineer to pay or to see to the payment of any monies due any Subcontractor or any other person or organization, except as may otherwise be required by law. The Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done in accordance with the schedule of values.

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

The Contractor agrees to bind specifically every Subcontractor to the specific terms and conditions of the Contract Documents for the benefit of the Owner.

All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance, except such rights as they may have to the proceeds of such insurance. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor.

- 6.4. PATENT FEES AND ROYALTIES.** The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents. The Contractor shall indemnify and hold harmless the Owner and Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.
- 6.5. PERMITS.** The Contractor shall obtain and pay for all construction permits and licenses and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of his/her Bid. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall also pay all public utility charges necessary for the meter/service connections to place installed devices into working order and placing said service accounts in the name of the City of Bloomington, or their assigned designee.
- 6.6. LAWS AND REGULATIONS.** The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the Specifications or Drawings are in conflict therewith, the Contractor shall give the Engineer prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. 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, the Contractor shall bear all costs arising there from; however, it shall not be the Contractors primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.
- 6.7. TAXES.** The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the law of the place where the work is to be performed. The Owner is exempt from sales tax on products permanently incorporated into the work. The Contractor may obtain sales tax exemption for such materials, products, and equipment and may obtain an Indiana General Sales Tax Exemption Certificate from the Owner.

**6.8. Use of PREMISES.** The Contractor shall confine their equipment, the storage of materials and equipment and the operations of the Contractor's workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. No assumptions of allowable traffic closures shall be made by the Contractor unless specifically called for in a "Maintenance of Traffic" plan should one exist. All roadway and lane closures must be approved by the Engineer prior to implementing the closure and a 'Notice of Intent' to close a lane or roadway must be delivered in writing to the Engineer by the Wednesday preceding the week of the desired closure date or time so proper notification can be given to the required personnel.

The Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall the Contractor subject any part of the Work to stresses or pressures that will endanger it.

**6.9. RECORD DRAWINGS.** The Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Engineer and shall be delivered to the Engineer for the Owner upon completion of the Project and prior to final payment.

**6.10. SAFETY AND PROTECTION.** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to: all employees on the Work and other persons who may be affected thereby. This includes ensuring the safety of pedestrians, bicyclist, and motorists who are allowed to access the site during the project. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor: except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Engineer has issued a notice to the Owner and Contractor in accordance with Supplementary Conditions that the Work is acceptable.

**6.11. SUPERINTENDENT OF SAFETY.** The Contractor shall designate a responsible member of his or her organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner. The Superintendent of Safety shall be responsible for the maintenance of traffic control devices and personnel in accordance with the Manual on Uniform Traffic Control Devices (M.U.T.C.D.) for

work zone safety. Weekly "Sign and Barricade Reports" are to be submitted by the Superintendent of Safety.

**6.12. EMERGENCIES.** In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, is obligated to act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the Contractor believes that additional work done by the Contractor in an emergency which arose from causes beyond the Contractor's control entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore.

**6.13. INDEMNIFICATION.** The Contractor shall indemnify and hold harmless the Owner and Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: 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 there from and 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. In any and all claims against the Owner or Engineer 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 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 workmen's compensation acts, disability benefit acts or other employee benefit acts. The indemnification obligations of the Contractor shall not extend to the liability of the Engineer, the Engineer's agents or employees arising out of: the preparation of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications or the giving of or the failure to give directions or instructions by the Engineer, his or her agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

## **7.00. WORK BY OTHERS.**

The Owner may perform additional work related to the Project by its own forces, or the Owner may let other direct contracts therefore which shall contain General Conditions similar to these. The Contractor shall afford the other contractors who are parties to such direct contracts (or the Owner, if Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the Contractor's Work with theirs.

If any part of the Contractor's Work depends for proper execution or results upon the work of any such other contractor (or Owner), the Contractor shall inspect and promptly report to the Engineer in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of the Contractor's Work except as to defects and deficiencies which may appear in the other work after the execution of the Contractor's Work.

The Contractor shall do all cutting, fitting, and patching of the Contractor's Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and of the other contractors whose work will be affected.

If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any additional work. If the Contractor believes that the performance of any such additional work by the Owner or others involves the Contractor in additional expense or entitles the Contractor to an extension of the Contract Time, the Contractor may make a claim therefore.

#### **8.00. OWNER'S RESPONSIBILITIES.**

The Owner shall issue all communications to the Contractor through the Engineer.

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

The Owner shall furnish the data required of the Owner under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due.

In addition to the Owner's rights to request changes in the Work, the Owner shall be obligated to execute Change Orders.

#### **9.0. ENGINEER'S STATUS DURING CONSTRUCTION.**

**9.1. OWNER'S REPRESENTATIVE.** The Engineer will be the Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's representative during construction are set forth in these General Conditions and shall not be extended without the written consent of the Owner and the Engineer.

**9.2. CLARIFICATIONS AND INTERPRETATIONS.** The Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles the Contractor to an increase in the Contract Price, the Contractor may make a claim therefore.

**9.3. REJECTING DEFECTIVE WORK.** The Engineer will have authority to reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Specifications, or has been damaged prior to the Engineer's recommendation of final payment). The Engineer will also have authority to require special inspection or special testing of the Work whether or not the Work is fabricated, installed or completed.

**9.4. DECISIONS ON DISAGREEMENTS.** The Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance hereunder. In the Engineer's capacity as interpreter and judge he/she will exercise his/her best efforts to insure faithful performance by

both Owner and Contractor. He or she will not show partiality to either and will not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes, and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred to the Engineer for decision, which the Engineer will render in writing within a reasonable time.

**9.5. ARBITRATION.** Either the Owner or the Contractor may demand arbitration with respect to any such claim, dispute, or other matter that has been referred to the Engineer, except any which have been waived by the making or acceptance of final payment, such arbitration to be in accordance with these General Conditions. However, no demand for arbitration of any such claim, dispute, or other matter shall be made until the earlier of (a) the date on which the Engineer has rendered his/her decision or (b) the tenth day after the parties have presented their evidence to the Engineer if he/she has not rendered his/her written decision before that date. No demand for arbitration shall be made later than thirty (30) days after the date on which the Engineer rendered his/her written decision in respect to the claim, dispute or other matter as to which arbitration is sought; and the failure to demand arbitration within said thirty (30) day period shall result in the Engineer's decision being final and binding upon the Owner and the Contractor. If the Engineer renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.

**9.6. LIMITATIONS ON THE ENGINEER'S RESPONSIBILITIES.** Neither the Engineer's authority to act under this article or elsewhere in the Contract Documents nor any decision made by the Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any material, manufacturer, fabricator, supplier or any of their agents or employees or any other person performing any of the Work.

The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of Contractor's or their agents or employees or any other persons at the site or otherwise performing any of the Work.

#### **10.00. CHANGES IN THE WORK.**

Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders and initiated through a Field Order or Work Change Directive from the Engineer or Owner. Upon receipt of a Change Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in these General Conditions on the basis of a claim made by either party.

The Engineer may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order or Work Change Directives. If the Contractor believes that any minor change or alteration authorized

by the Engineer entitles Contractor to an increase in the Contract Price, the Contractor may make a claim therefore.

Additional work performed by the Contractor without authorization of a Change Order will not entitle him or her to an increase in the Contract Price or an extension of the Contract Time, except as otherwise provided herein.

The Owner shall execute appropriate Change Orders prepared by the Engineer covering changes in the Work to be performed as provided herein and any other claim of the Contractor for a change in the Contract Time or the Contract Price which is confirmed by the Engineer.

It is the Contractor's responsibility to notify his or her Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly.

#### **11.0. CHANGE OF CONTRACT PRICE.**

The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at the Contractor's expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to the Owner and Engineer within twenty (20) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the Owner and the Contractor cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. All changes requested by the Engineer or Owner must be submitted to the Contractor in the form of a Field Order, at which time, the contractor shall provide in return a request for a change order with the prices for said requested work detailed by item and quantity for the Engineer and Owner to review for acceptance and so they can issue a Change Order for the approved work.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

By mutual acceptance of a lump sum.

On the basis of the Cost of the Work plus a Contractor's Fee for overhead and profit (determined in accordance with the following paragraphs).

**11.1. COST OF THE WORK.** The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items:

Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications set forth in the Wage Scale Determination. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of

fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by the Owner.

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

Payments made by the Contractor to the Subcontractors for Work performed by the Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Owner and shall deliver such bids to the Owner, who will then determine with the advice of the Engineer which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as the Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

**11.2. SUPPLEMENTAL COSTS** include the following:

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

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

Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with the rental agreements approved by the Owner with the advice of the Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

Sales, use or similar taxes related to the Work, and for which the Contractor is liable, imposed by any governmental authority.

Deposits lost for causes other than the Contractor's negligence, royalty payments and fees for permits and licenses.

Losses, damages and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses,



damages and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for the Contractor's services a fee proportionate to that stated under Contractor's Fee.

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

Minor expenses such as telegrams, long distance phone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

The cost of premiums for additional bonds and insurance required because of changes in the Work.

**11.03** The term "**COST OF THE WORK**" shall *not* include any of the following:

Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor, whether at the site or in the Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications - all of which are to be considered administrative costs covered by the Contractor's Fee.

Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.

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

Cost of premiums for all bonds and for all insurance policies whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except as otherwise provided above).

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

Other overhead or general expense costs of any kind not specifically and expressly included in the Cost of the Work.

**11.4. CONTRACTOR'S FEE.** The Contractor's Fee which includes the Contractor's overhead and profit shall be determined as follows:

A mutually acceptable fee; or, if none can be agreed upon,

A fee based on the following percentages of the various portions of the Cost of the Work:

for payroll costs and the cost of all materials and equipment included in the Work, the Contractor's Profit shall be ten percent.

for payments to Subcontractors, the Contractor's Profit shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent, and

no fee shall be payable on the basis of costs of special consultants or supplemental costs.

- 11.5. CREDIT.** The amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

Whenever the cost of any Work is to be determined pursuant to preceding paragraphs, the Contractor will submit in form prescribed by the Engineer an itemized cost breakdown together with supporting data.

- 11.6. UNIT PRICE WORK.** Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the approximate quantity of each item as indicated in the Agreement.

The approximated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

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

Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order.

## **12.00. CHANGE OF CONTRACT TIME.**

The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Owner and Engineer within twenty (20) days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless the Engineer allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by the Engineer if the Owner and the Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. Computation of Contract time shall be in accordance with the contract agreement and not that of the Indiana Department of Transportation (INDOT).

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if the Contractor makes a claim therefore as provided in the preceding paragraph. A claim for an extension of the Contract Time otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float, using Critical Path analysis as called for in Section 2.08 above, for a delayed activity at the time of the event giving rise to the Claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the project participants. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

All time limits stated in the Contract Documents are of the essence of the Agreement. The Contractor agrees to make no monetary claim for delays, interferences or hindrances of any kind in the performance of this Contract occasioned by any act or omission to act of the Owner or any other party, and agrees that

any such claim shall be fully compensated for by an extension of time to complete performance of the work where Critical Path analysis shows such an extension of time is warranted.

### **13.00. LIQUIDATED DAMAGES.**

Liquidated damages shall be paid to the Owner in accordance with the Agreement. If no provision is made in the Agreement, liquidated damages shall be paid as follows:

In the event the Contractor fails to satisfactorily complete the entire Work contemplated and provided for under this contract on or before the date of completion as determined and described elsewhere herein, the Owner shall deduct from the amount due the Contractor the sum of **Five Hundred Dollars (\$500.00) for each calendar day of delay**, which sum is agreed upon not as a penalty, but as a fixed and liquidated damage for each day of such delay, to be paid in full and subject to no deduction, it being understood and agreed that timely completion is of the essence. If the monies due the Contractor are less than the amount of such liquidated damages, then the Contractor or the Contractor's surety shall pay the balance to the Owner.

### **14.0. WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.**

**14.1. WARRANTY AND GUARANTEE.** The Contractor warrants and guarantees to the Owner and Engineer that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in the Tests and Inspection paragraph. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals, shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided herein.

**14.2. TESTS AND INSPECTIONS.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by some public body, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Engineer the required certificates of inspection, testing, or approval. All other inspections, tests, or approvals required by the Contract Documents shall be performed by organizations acceptable to the Owner and the Contractor and the costs thereof shall be borne by the Owner unless otherwise specified.

The Contractor shall give the Engineer timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required so to be inspected, tested or approved is covered without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation, and such uncovering shall be at the Contractor's expense unless the Contractor has given the Engineer timely notice of the Contractor's intention to cover such Work and the Engineer has not acted with reasonable promptness in response to such notice. This timeframe of notification shall be no less than 2 hours, and occur during normal working hours of the City of Bloomington (Monday through Friday – 8:00a.m. to 5:00p.m.) Requests for inspection during all other hours shall receive 48 hours' notice.

Neither observations by the Engineer nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his/her obligations to perform the Work in accordance with the Contract Documents.

**14.3. ACCESS TO WORK.** Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

**14.4. UNCOVERING WORK.** If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered by the Contractor for the Engineer's observation and replaced at the Contractor's expense.

If any Work has been covered which the Engineer has not specifically requested to observe prior to its being covered, or if the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if the Contractor makes a claim therefore.

**14.5. OWNER MAY STOP THE WORK.** If the Work is defective, or the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or if the Contractor fails to make prompt payment to Subcontractors or for labor, materials or equipment, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

**14.6. CORRECTION OR REMOVAL OF DEFECTIVE WORK.** If required by the Engineer prior to his/her recommendation of final payment, the Contractor shall promptly, without cost to the Owner and as specified by the Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with non-defective Work. If the Contractor does not correct such defective Work within a reasonable time, all as specified in a written notice from the Engineer, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor, and an appropriate deductive Change Order shall be issued. The Contractor shall also bear the expenses of making good all Work of others destroyed or damaged by the Contractor's correction, removal or replacement of his/her defective Work.

**14.7. CORRECTION PERIOD.** If, after final payment and prior to the expiration of one year after the date of Substantial Completion (unless a longer period is set forth in the Supplementary Conditions) or such longer period as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work or, if it has been rejected by the Owner, remove it from the site and

replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

**14.8. ACCEPTANCE OF DEFECTIVE WORK.** If, instead of requiring correction or removal and replacement of defective Work, the Owner (and, prior to final payment, the Engineer) prefers to accept it, the Engineer or Owner may do so. In such case, if acceptance occurs prior to final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after final payment, an appropriate amount shall be paid by the Contractor to the Owner.

**14.9. NEGLECTED WORK BY THE CONTRACTOR.** If the Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Owner, after seven (7) days written notice to the Contractor may, without prejudice to any other remedy the Owner may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor if the Engineer agrees with such action, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. 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.

## **15.0. PAYMENTS AND COMPLETION.**

**15.1. APPLICATION FOR PROGRESS PAYMENT.** The Contractor may, no more frequently than every thirty (30) days make an estimate of the value of the Work completed, and submit an Application for Payment. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 11.06. The estimated cost of repairing, replacing, or rebuilding any part of the Work or replacing materials which do not conform to the Contract Documents will be deducted from the estimated value. The Application for Payment shall be submitted to the Engineer for review and approval.

**15.1.1.** At least twenty (20) days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

**15.1.2.** If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation *establishing full payment by Contractor for the materials and equipment*; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

**15.1.3.** Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor

have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

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

**15.2. CONTRACTOR'S WARRANTY OF TITLE.** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Owner at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

**15.3. REVIEW OF APPLICATION FOR PAYMENT.** The Contractor shall furnish to the Engineer such detailed information as the Engineer may request to aid in the review and approval of such Estimates. The Engineer will, within five (5) working days after receipt of each Application for Payment, either recommend payment and present the Application to the Owner, or return the Application to the Contractor indicating in writing the Engineer's reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application. The Owner will pay to the Contractor within forty-five (45) days after receipt of Application. The escrow agent, Owner, and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. Upon substantial completion of the work, any amount retained may be paid to the Contractor. When the work has been substantially completed except for the work which cannot be completed due to weather conditions, lack of materials or other reasons which in the judgment of the Owner are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed. Such Applications for Payment are processed on a regular biweekly schedule, which will be provided to the Contractor.

**15.4. FINAL INSPECTION.** When the Work has been substantially completed and at a time mutually agreeable to the Owner, Engineer, and Contractor, the Engineer and Contractor shall make a final walk-through inspection of the Work. The Engineer shall report to the Owner his/her findings as to the acceptability and completeness of the Work.

**15.5. APPLICATION FOR FINAL PAYMENT.** Upon written notice from the Engineer that Work is completed and acceptable as provided in the Supplementary Conditions, the Contractor shall make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all other documentation called for in the Contract Documents and such other data and schedules as the Engineer may reasonably require.

**15.6. FINAL PAYMENT.** If, on the basis of the Engineers observation and review of the Work during construction, his/her final inspection and his/her review of the final Application for Payment, all as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and the Contractor has fulfilled all of his/her obligations under the Contract Documents, the Engineer will, within ten (10) days after receipt of the final Application for Payment, present the Application to the Owner for Payment. Thereupon the Engineer will give written notice to the Contractor that the Work is acceptable subject to the provisions of the paragraph regarding waiver of claims. Otherwise, the Engineer will return the Application to the Contractor, indicating in writing his/her reasons for refusing to recommend final payment, in which case the Contractor shall make

the necessary corrections and resubmit the Application. The Owner shall, within forty-five (45) days of presentation to the Owner of the final Application for Payment, pay the Contractor the entire sum found to be due after deducting all amounts to be retained under any provision of the Contract Documents.

**15.7. CONTRACTOR'S CONTINUING OBLIGATION.** The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

**15.8. WAIVER OF CLAIMS.** The making and acceptance of final payment shall constitute:

a waiver of all claims by the Owner against the Contractor other than those arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

**16.0. SUSPENSION OF WORK AND TERMINATION.**

**16.1. OWNER MAY SUSPEND WORK.** The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of ninety (90) days by notice in writing to the Contractor, which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the Contractor makes a claim therefore as provided in these General Conditions.

**16.2. OWNER MAY TERMINATE.** If the Contractor is adjudged a bankrupt or insolvent, or if the Contractor makes a general assignment for the benefit of his/her creditors, or if a trustee or receiver is appointed for the Contractor or for any of his/her property, or if the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if the Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if the Contractor disregards the authority of the Engineer, or if he or she otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and the Contractor's Surety seven (7) days' written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excesses shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner shall be incorporated in a Change Order.

Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any rights of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from liability.

Upon seven days written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit.

- 16.3. CONTRACTOR MAY STOP WORK OR TERMINATE.** If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor any sum recommended by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, upon seven (7) days' written notice to the Owner and Engineer, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if the Engineer has failed to act on an Application for Payment or the Owner has failed to make any payment as aforesaid, the Contractor may upon seven (7) days' notice to the Owner and Engineer stop the Work until the Contractor has been paid all amounts then due.

#### **17.00. ARBITRATION.**

- 17.1** As a condition precedent to the commencement of judicial action for resolution of Claims, disputes, and other matters in question arising out of, or relating to, the Agreement, including any disagreement with Engineer's decisions, either Owner or Contractor shall file a written demand for arbitration of the dispute with the other party.
- 17.2** No demand for arbitration of any Claim, dispute, or other matter that is required to be referred to Engineer initially for decision in accordance with Paragraph 10.00, 11.00 and 12.00 of the General Conditions may be made until the earlier of (a) the date on which Engineer has rendered a written decision or (b) thirty (30) days after the parties have presented their evidence to Engineer if a written decision has not been rendered by Engineer before that date. No demand for arbitration of any such Claim, dispute, or other matter may be made later than thirty (30) days after the date on which Engineer has rendered a written decision in respect thereof; and the failure to demand arbitration within said thirty (30) day period shall result in Engineer's decision being final and binding upon Owner and Contractor. If Engineer renders a decision after arbitration or judicial proceedings have been initiated, such decision may be entered as evidence but will not supersede such proceedings, except where the decision is acceptable to the parties concerned.
- 17.3** In all other cases, the demand for arbitration shall be made within a reasonable time after the Claim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim, dispute, or other matter in question would be barred by the applicable statute of limitations.
- 17.4** If the party upon whom the demand for arbitration is made rejects arbitration, or fails to give a written response within thirty (30) days after receiving the demand, the other party may commence judicial action on the merits of the dispute. If the party upon whom the demand for arbitration is



made accepts arbitration, the other party may commence arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The agreement to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing law of any court having jurisdiction.

**17.5** If a Claim, dispute, or other matter in question between Owner and Contractor involves the work of a Subcontractor, either Owner or Contractor may join such Subcontractor as a party to the arbitration between Owner and Contractor. Contractor shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in an arbitration between Owner and Contractor involving the Work of such Subcontractor. Nothing in this paragraph nor in the provision of such subcontract consenting to joinder shall create any Claim, right, or cause of action in favor of Subcontractor and against Owner, Engineer, or Engineer's Consultants that does not otherwise exist

**17.6** The award rendered by the arbitrators will be final, and judgment may be entered upon it in any court having jurisdiction.

#### **18.0. ENVIRONMENTAL REQUIREMENTS.**

The Contractor, when constructing a project involving trenching and/or other related earth excavation, shall comply with the following environmental constraints and be required to install appropriate erosion control devices as determined by the City of Bloomington, which may include, but not be limited to the placement of inlet protection, silt fencing, check dams, temporary seeding and/or mulching. All costs for this work shall be included in the cost of the base Bid with work performed by the contractor to ensure that all erosion is contained on site.

**18.1. WETLANDS.** The Contractor, when disposing of excess, spoil, or other related earth construction materials on public or private property, shall not fill in or otherwise convert wetlands.

**18.2. FLOODPLAINS.** The Contractor, when disposing of excess, spoil, or other related earth construction materials on public or private property, shall not fill in or otherwise convert 100 year flood plain areas delineated on the latest FEMA Floodplain Maps.

**18.3. HISTORIC PRESERVATION.** Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Utilities Engineer's Office. Construction shall be temporarily halted pending the notification process and further directions issued by the City after consultation with the State Historic Preservation Office (SHPO).

**18.4. ENDANGERED SPECIES.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species or their critical habitat be brought to the attention of the contractor, the contractor shall immediately report this evidence to the City Engineer. Construction shall be temporarily halted pending the notification process and further directions issued by the OWNER after consultation with the U.S. Fish and Wildlife Service.

**18.05 CONSTRUCTION STORMWATER GENERAL PERMIT (CSGP).** The Contractor shall comply with all applicable requirements of the CSGP for erosion control utilizing applicable Best Management Practices (B.M.P.'s) prior to the commencement of work.

#### **19.0. MISCELLANEOUS.**

- 19.1. GIVING NOTICE.** Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to be validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by first class, registered or certified mail, postage prepaid, to the business address provided on the Contractual Agreement, or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.
- 19.2. COMPUTATION OF TIME.** Computation of time shall be set forth by the number of calendar days allowed for in the contract agreement. Calendar days shall consist every day shown on the calendar.
- 19.3. ADDITIONAL SPECIFICATION REQUIREMENTS.** Areas of work not covered under Special Conditions will be required to meet specifications covered in applicable sections of Indiana Department of Transportation Specifications 2018 Edition (or latest edition and supplements at time of Bid) for the installation and placement of materials to ensure quality workmanship. INDOT Specifications shall not be interpreted to contradict current City of Bloomington Utilities or Bloomington Utility Specifications, which shall override and supersede INDOT Specifications.
- 19.4. MAINTENANCE OF TRAFFIC.** For all maintenance of traffic, including pedestrian routes, the Contractor shall follow the current Indiana Manual on Uniform Traffic Control Devices (MUTCD) with regard to all signage and signage placement used during the project for both vehicular, bicycle and pedestrian traffic travelling through the project limits. The Contractor shall install and maintain any temporary pedestrian routes in accordance with the Draft Public Right of Way Accessibility Guidelines (PROWAG) and must be approved by the Department of Planning and Transportation.
- 19.5. LIMITATION OF DAMAGES.** With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.
- 19.6. NO WAIVER.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- 19.7. SURVIVAL OF OBLIGATIONS.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.