

GENERAL CONDITIONS
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CITY UTILITIES OF SPRINGFIELD, MISSOURI

ARTICLE 1 - DEFINITIONS

Whenever 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:

AGREEMENT - The written agreement between CITY UTILITIES and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to and made a part of the Agreement, including these General Conditions.

APPLICATION FOR PAYMENT - The form furnished by RESIDENT ENGINEER which is to be used by CONTRACTOR in requesting progress payments and which is to include the schedule of values required by paragraph 14.1 and an affidavit of CONTRACTOR that progress payments theretofore received on account of the Work have been applied by CONTRACTOR to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment.

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

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

BONDS - Bid, performance and payment bonds and other instruments of security, furnished by CONTRACTOR and his surety in accordance with the Contract Documents.

CITY UTILITIES - The City Utilities of Springfield, Missouri, 301 East Central, Springfield, Missouri; the Board of Public Utilities of the City of Springfield, Missouri; the City of Springfield, Missouri, a municipal corporation; also referred to as OWNER.

CHANGE ORDER - A written order to CONTRACTOR signed by CITY UTILITIES 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.

CONTRACT DOCUMENTS - Modifications, Agreement, Response to RFP, Addenda, Special Conditions, Specifications, Drawings, Document Submittals, Bid Form, General Conditions, Performance Labor and Materials Bond, Instructions to Bidders, and Invitation to Bid.

CONTRACT PRICE - The total moneys payable to CONTRACTOR under the Contract Documents.

CONTRACT TIME - The number of days stated in the Contract Documents for the completion of the Work.

CONTRACTOR - The person, firm or corporation with whom CITY UTILITIES has executed the Agreement.

DAY - A calendar day of twenty-four hours measured from midnight to the next midnight.

DRAWINGS - The drawings which show the character and scope of the Work to be performed and are referred to in the Contract Documents.

ENGINEER - See "RESIDENT ENGINEER"

FIELD ORDER - A written order issued by RESIDENT ENGINEER which clarifies or interprets the Contract Documents in accordance with paragraph 9.3 or orders minor changes in the Work in accordance with paragraph 10.2.

INSPECTOR - The City Utilities representative who reports to the Resident Engineer as to whether the Work performed by the CONTRACTOR meets the requirements of the Contract Documents.

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 RESIDENT ENGINEER in accordance with paragraph 9.3 or (d) a written order for a minor change or alteration in the Work issued by RESIDENT ENGINEER pursuant to paragraph 10.2. A Modification may only be issued after execution of the Agreement.

NOTICE OF AWARD - The written notice by CITY UTILITIES to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, CITY UTILITIES will execute and deliver the Agreement to him.

NOTICE TO PROCEED - A written notice given by CITY UTILITIES to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents. The Purchase Order shall serve as the Notice to Proceed.

OWNER - See CITY UTILITIES.

PROJECT - The entire Work to be performed by CONTRACTOR as provided in the Contract Documents.

PROJECT MANAGER - CITY UTILITIES' representative, responsible for the preparation of the Contract Documents, Contract Administration and Contract Close-out.

PROPOSAL - See BID.

RESIDENT ENGINEER - The person, usually a Registered Professional Engineer, designated by CITY UTILITIES as its representative for all contractual dealings with the CONTRACTOR as set forth in Article 9.

SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by CONTRACTOR, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.

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.

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

SUBSTANTIAL COMPLETION - The date as certified by **RESIDENT 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 certification, the date when final payment is due in accordance with paragraph 14.10.

SUPPLIER - An individual, firm or corporation having a direct contract with **CONTRACTOR** for the supply of any equipment or materials used in performance of the Work.

WARRANTY REPAIR ITEMS - Items which have been installed and become functional but have subsequently failed. Also, items which have performed in accordance with the provisions of the plans and specifications but require remedial action within the terms of the warranty period herein.

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

ARTICLE 2 - PRELIMINARY MATTERS

EXECUTION OF AGREEMENT:

2.1 At least three counterparts of the Agreement and such other Contract Documents as practicable will be executed and delivered by **CONTRACTOR** to **CITY UTILITIES** within ten (10) days of the Notice of Award and **CITY UTILITIES** will execute and deliver one counterpart to **CONTRACTOR** within ten (10) days of receipt of the executed Agreement from **CONTRACTOR**.

DELIVERY OF BONDS:

2.2 When he delivers the executed Agreements to **CITY UTILITIES**, **CONTRACTOR** shall also deliver to **CITY UTILITIES** such Bonds and certificates of insurance as he may be required to furnish in accordance with paragraph 5.1.

COPIES OF DOCUMENTS:

2.3 **CITY UTILITIES** shall furnish to **CONTRACTOR** up to ten (10) copies (unless otherwise provided) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

CONTRACTOR'S PRE-START REPRESENTATIONS:

2.4 **CONTRACTOR** represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself 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 he has correlated his study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the General Requirements (Division 1) of the Specifications and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.

NOTICE TO PROCEED; COMMENCEMENT OF CONTRACT TIME:

- 2.5 The Contract Time will commence to run on the day indicated in the Notice to Proceed. The Notice to Proceed will be issued after acceptable certificates of insurance and performance bonds have been received and after the Agreement is executed by CITY UTILITIES. A copy of the executed Agreement will be furnished to the CONTRACTOR with the Notice to Proceed.

STARTING THE PROJECT:

- 2.6 CONTRACTOR shall start to perform his obligations under the Contract Documents within ten (10) calendar days after Notice to Proceed.

BEFORE STARTING CONSTRUCTION:

- 2.7 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to RESIDENT ENGINEER any conflict, error or discrepancy which he may discover.
- 2.8 Within ten (10) days after delivery of the executed Agreement by CITY UTILITIES to CONTRACTOR, CONTRACTOR shall submit to RESIDENT ENGINEER for review, an estimated progress schedule indicating the starting and completion dates of the various stages of the Work, and a preliminary schedule of Shop Drawing submissions.
- 2.9 Before starting the Work at the site, CONTRACTOR shall furnish CITY UTILITIES certificates of insurance as required by Article 5.

ARTICLE 3 - CORRELATION, INTERPRETATION; AND INTENT OF CONTRACT DOCUMENTS

- 3.1 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 CITY UTILITIES and CONTRACTOR. They may be altered only by a Modification.
- 3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall call it to RESIDENT ENGINEER's attention in writing at once and

before proceeding with the Work affected thereby; however, he shall not be liable to CITY UTILITIES for his failure to discover any conflict, error or discrepancy in the Specifications or Drawings. In resolving such conflicts, error or discrepancies, the documents shall be given precedence in the following order (listed in order from highest to lowest precedence): Modifications, Agreement, Response to RFQ, Addenda, Special Conditions, Specifications, Drawings, Document Submittals, Bid Form, General Conditions, Performance Labor and Materials Bond, Instructions to Bidders and Invitation to Bid. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general 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.

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

- 4.1 CITY UTILITIES shall furnish, as indicated in the Contract Documents and not later than the date when needed by CONTRACTOR, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY UTILITIES unless otherwise specified in the Contract Documents. If CONTRACTOR believes that any delay in CITY UTILITIES furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

PHYSICAL CONDITIONS - SURVEYS AND REPORTS:

- 4.2 Reference is made to the General Requirements (Division 1) of the specifications 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 CITY UTILITIES in preparation of the Drawings and Specifications.

UNFORESEEN PHYSICAL CONDITIONS:

- 4.3 CONTRACTOR shall promptly notify RESIDENT ENGINEER in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. RESIDENT ENGINEER will promptly investigate those conditions. Promptly thereafter, CITY UTILITIES shall obtain the necessary additional surveys and tests and furnish copies to CONTRACTOR. If 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 CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions. If CONTRACTOR fails to obtain a Change Order before proceeding with the Work, then CONTRACTOR waives all claims for an increase in the Contract Price.

REFERENCE POINTS:

- 4.4 CITY UTILITIES shall provide engineering surveys for construction to establish reference points which in its judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for surveying and laying out the Work (unless otherwise stated herein), and protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of CITY UTILITIES. He shall report to RESIDENT ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed or moved.

ARTICLE 5 - BONDS AND INSURANCE

PERFORMANCE, PAYMENT, AND OTHER BONDS:

- 5.1 CONTRACTOR shall furnish performance and payment Bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price, and in the form provided herein and with such sureties as are licensed to conduct business in the state of Missouri and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.
- 5.2 If the surety on any Bond furnished by CONTRACTOR is declared 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, CONTRACTOR shall within five days thereafter substitute another Bond and surety, both of which shall be acceptable to CITY UTILITIES.

CONTRACTOR'S INSURANCE REQUIREMENTS

- 5.3 Without limiting any of the other obligations or liabilities, the CONTRACTOR shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the Work is complete and accepted by CITY UTILITIES, insurance of such types and in such amounts as may be necessary to protect it and the interests of CITY UTILITIES against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance together with the underwriter thereof in each case, are subject to approval by CITY UTILITIES. Any such insurance shall apply as primary insurance with respects to CONTRACTOR and with respects to CITY UTILITIES.

- 5.4 The minimum insurance coverage amounts and certificate requirement shall be as provided in DIVISION 1--GENERAL REQUIREMENTS of the Technical Specifications.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE:

- 6.1 CONTRACTOR shall supervise and direct the Work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

- 6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to CITY UTILITIES except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

LABOR, MATERIALS, AND EQUIPMENT:

- 6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. He shall at all times maintain good discipline and order at the site.

- 6.4 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.

- 6.5 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by RESIDENT ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 6.6 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.

SUBSTITUTE MATERIALS OR EQUIPMENT:

- 6.7 If the Specifications, law, ordinance or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute that is equal to any material or equipment specified, and if CONTRACTOR wishes to furnish or use a proposed substitute, he shall make written application to CITY UTILITIES for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified; stating whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. No substitute shall be ordered or installed without the written approval of CITY UTILITIES who will be the judge of quality and may require CONTRACTOR to furnish such other data about the proposed substitute as he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as CITY UTILITIES may require which shall be furnished at CONTRACTOR'S expense.

CONCERNING SUBCONTRACTORS:

- 6.8 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom CITY UTILITIES may have reasonable objection. A Subcontractor or other person or organization identified in writing to CITY UTILITIES by CONTRACTOR prior to the Notice of Award and not objected to in writing by CITY UTILITIES prior to the Notice of Award will be deemed acceptable to CITY UTILITIES. Acceptance of any Subcontractor, other person or organization by CITY UTILITIES shall not constitute a waiver of any right of CITY UTILITIES to reject-defective Work or Work not in conformance with the Contract Documents. If CITY UTILITIES after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. CONTRACTOR shall not be required to employ any Subcontractor, other person or organization against whom he has reasonable objection. CONTRACTOR shall not without the consent of CITY UTILITIES make any substitution for any Subcontractor, other person or organization who has been accepted by CITY UTILITIES unless CITY UTILITIES determines that there is good cause for doing so.
- 6.9 CONTRACTOR shall be fully responsible for all acts and omissions of his 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 he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between CITY UTILITIES

and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of CITY UTILITIES to pay or to see to the payment of any moneys due any Subcontractor or other person or organization except as may otherwise be required by law. CITY UTILITIES may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amount paid to CONTRACTOR on account of specific Work done in accordance with the schedule of values.

- 6.10 The divisions and sections of the specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.
- 6.11 CONTRACTOR agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY UTILITIES.

PATENT FEES AND ROYALTIES:

- 6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of 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 CITY UTILITIES 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 CITY UTILITIES in the Contract Documents. CONTRACTOR shall indemnify and hold harmless CITY UTILITIES 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.

PERMITS:

- 6.13 Unless otherwise stated in these Specifications, 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 Bid. CITY UTILITIES shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall also pay all utility charges.

LAWS AND REGULATIONS:

- 6.14 CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he shall give CITY UTILITIES prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to CITY UTILITIES he shall bear all costs

arising therefrom; however, it shall not be his primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

TAXES:

6.15 CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the Work is to be performed.

USE OF PREMISES:

6.16 CONTRACTOR shall confine his equipment, the storage of materials and equipment and the operations of his 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.

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

RECORD DRAWINGS:

6.18 CONTRACTOR shall keep one (1) 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 CITY UTILITIES and shall be delivered to the Resident Engineer upon completion of the Project. [Note: Further provisions in respect of such record drawings may be included in the General Requirements (Division 1).]

SAFETY AND PROTECTION:

6.19 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.19.1 all employees on the Work and other persons who may be affected thereby,

6.19.2 all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and

6.19.3 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 of property in the course of construction. 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. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for its safety and protection. He shall notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in paragraph 6.19.2 or 6.19.3 caused, directly or indirectly, in whole or in part, by 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 CONTRACTOR. 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 CITY UTILITIES has notified CONTRACTOR in accordance with paragraph 14.10 that the Work is acceptable.

- 6.20 CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to CITY UTILITIES.

EMERGENCIES:

- 6.21 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY UTILITIES, is obligated to act, at his discretion, to prevent threatened damage, injury, or loss. He shall give CITY UTILITIES 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 CONTRACTOR believes that additional work done by him in an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.

SHOP DRAWINGS AND SAMPLES:

- 6.22 After checking and verifying all field measurements, CONTRACTOR shall submit to CITY UTILITIES for approval, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8) five copies (or at CITY UTILITIES' option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of CONTRACTOR and identified as CITY UTILITIES may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable CITY UTILITIES to review the information as required.
- 6.23 CONTRACTOR shall also submit to CITY UTILITIES for approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

- 6.24 At the time of each submission, CONTRACTOR shall in writing call CITY UTILITIES' attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents.
- 6.25 CITY UTILITIES will review and approve with reasonable promptness Shop Drawings and samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make any corrections required by CITY UTILITIES and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by CITY UTILITIES on previous submission. CONTRACTOR's stamp of approval on any Shop Drawing or sample shall constitute a representation to CITY UTILITIES that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials catalog numbers, and similar data, or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.
- 6.26 Where a Shop Drawing or sample submission is required by the Specifications, no related Work shall be commenced until the submission has been approved by CITY UTILITIES. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to CITY UTILITIES.
- 6.27 CITY UTILITIES' approval of Shop Drawings or samples shall not relieve CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless CONTRACTOR has in writing called CITY UTILITIES' attention to such deviation at the time of submission and CITY UTILITIES has given written approval to the specific deviation, nor shall any approval by CITY UTILITIES relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

[Note: Further provisions in respect to Shop Drawings and samples may be included in the General Requirements (Division 1).]

CLEANING:

- 6.28 CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work he shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by CITY UTILITIES. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

[Note: Further provisions in respect of cleaning may be included in the General Requirements (Division 1).]

INDEMNIFICATION:

- 6.29 CONTRACTOR shall indemnify, defend, and hold harmless CITY UTILITIES, its agents, board members, directors, officers, and employees, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of the Work caused by the negligent or wrongful acts or omissions of CONTRACTOR, any Subcontractor, any Supplier, or anyone for whose acts or omissions any of them may be liable. In cases of concurring fault, each party shall bear its share of the loss.
- 6.30 In any and all claims against CITY UTILITIES or any of its agents, board members, directors, officers, and employees, the indemnification obligation under paragraph 6.29 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts. Nothing contained herein shall be considered a waiver of the defenses of sovereign immunity, official immunity, or the public duty doctrine. This indemnification agreement shall survive termination or expiration of the Contract Documents.

ARTICLE 7 - WORK BY OTHERS

- 7.1 CITY UTILITIES may perform additional work related to the Project or may let other direct contracts therefore, which shall contain General Conditions similar to these. CONTRACTOR shall afford the other contractors who are parties to such direct contracts (or CITY UTILITIES if it is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and execution of Work, and shall properly connect and coordinate his Work with theirs.
- 7.2 If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor (or CITY UTILITIES), CONTRACTOR shall inspect and promptly report to CITY UTILITIES in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of his Work except as to defects and deficiencies which may appear in the other work after the execution of his Work.
- 7.3 CONTRACTOR shall do all cutting, fitting and patching of his 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. 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 CITY UTILITIES and of the other contractors whose work will be affected.
- 7.4 If the performance of additional work by other contractors or CITY UTILITIES is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by CITY UTILITIES or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided in Articles 11 and 12.

ARTICLE 8 - CITY UTILITIES' RESPONSIBILITIES

- 8.1 CITY UTILITIES shall issue all communications to CONTRACTOR through RESIDENT ENGINEER.
- 8.2 In case of termination of the employment of RESIDENT ENGINEER, CITY UTILITIES shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former RESIDENT ENGINEER.
- 8.3 CITY UTILITIES shall furnish the data required of him under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.10.
- 8.4 CITY UTILITIES' duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to CITY UTILITIES, identifying and making available to CONTRACTOR copies of surveys and investigation reports of subsurface and latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by him in preparing the Drawings and Specifications.
- 8.5 In addition to his rights to request changes in the Work in accordance with Article 10, CITY UTILITIES (especially in certain instances as provided in paragraph 10.4) shall be obligated to execute Change Orders.
- 8.6 CITY UTILITIES' responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.2.
- 8.7 In connection with CITY UTILITIES' right to stop Work or suspend Work, see paragraphs 13.8 and 15.1. Paragraph 15.2 deals with CITY UTILITIES' right to terminate services of CONTRACTOR under certain circumstances.

ARTICLE 9 - RESIDENT ENGINEER'S STATUS DURING CONSTRUCTION AND CITY UTILITIES' REPRESENTATIVE

- 9.1 RESIDENT ENGINEER will be CITY UTILITIES' representative during the construction period and is responsible to the Project Manager.

VISITS TO SITE:

- 9.2 RESIDENT ENGINEER will observe the progress and quality of the executed Work and determine, in general, if the work is proceeding in accordance with the Contract Documents. He will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. His efforts will be directed toward providing

assurance for CITY UTILITIES that the completed Project will conform to the requirements of the Contract Documents.

CLARIFICATIONS AND INTERPRETATIONS:

- 9.3 RESIDENT ENGINEER will issue with reasonable promptness, at his option or upon Contractor's request, such written clarification or interpretations of the Contract Documents (in the form of drawings or otherwise) as he may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

REJECTING DEFECTIVE WORK:

- 9.4 RESIDENT ENGINEER will have authority to disapprove or reject work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty, defective, does not conform to the requirements of the Contract Documents, does not meet the requirements of any inspection, test or approval referred to in paragraph 13.2, or has been damaged by fault of Contractor prior to approval of final payment). He will also have authority to require special inspection or testing of the Work as provided in paragraph 13.7, whether or not the Work is fabricated, installed or completed.

LIMITATIONS ON RESIDENT ENGINEER'S RESPONSIBILITIES:

- 9.5 Neither RESIDENT ENGINEER's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of RESIDENT ENGINEER to CONTRACTOR, any Subcontractor, any materialman, fabricator, supplier or any of their agents or employees or any other person performing any of the Work.
- 9.6 RESIDENT ENGINEER will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and he will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- 9.7 RESIDENT ENGINEER will not be responsible for the acts or omissions of CONTRACTOR, or any Subcontractor, or any of his or their agents or employees, or any other persons at the site or otherwise performing any of the Work:
- 9.8 The Inspectors have no authority to do any of the following: approve or disapprove Work (except as expressly stated in the Specifications); clarify or interpret the Contract Documents; direct CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction; resolve disputes or claims of CONTRACTOR; or advise CONTRACTOR on safety precautions and programs incident thereto. Inspectors shall not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents. Inspectors shall not be responsible for the acts or omissions of CONTRACTOR, or any Subcontractor, or any of their agents or employees, or any other persons at the site or otherwise performing any of the Work.

9.9 If CONTRACTOR disagrees with an Inspector's determination as to whether or not the Work is in compliance with the Contract Documents or disagrees with any other determination or approval made by an Inspector, then CONTRACTOR shall notify the Resident Engineer who will make the determination. If CONTRACTOR disagrees with Resident Engineer's determination, then CONTRACTOR shall make a claim in accordance with Articles 10-12.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Without invalidating the Agreement, CITY UTILITIES may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a duly signed Change Order, the Contractor shall proceed with the Work involved. The following persons shall have authority to sign Change Orders on behalf of CITY UTILITIES, as stated below:

	<u>Contract Price</u>	<u>Contract Time</u>
General Manager	Unlimited	Unlimited
Director-Management Services	Up to \$5 million*	Unlimited
Manager—Purchasing	Up to \$1 million*	Unlimited
Department Manager	Up to \$10,000**	None
Designated Representative	Up to \$5,000**	None

*These limits apply to the total Contract Price, including all Change Orders.

**These limits apply to the amount of the Change Order.

All such Work shall be executed under the applicable conditions of the Contract Documents. **ANY CHANGE IN THE CONTRACT PRICE OR CHANGE IN THE CONTRACT TIME MUST BE INCLUDED IN THE CHANGE ORDER AND SIGNED BY CITY UTILITIES BEFORE THE WORK IS PERFORMED. CONTRACTOR SHALL NOT BE ENTITLED TO A CHANGE IN THE CONTRACT PRICE OR CONTRACT TIME FOR ADDITIONAL WORK THAT IS DONE WITHOUT A CHANGE ORDER. CONTRACTOR WAIVES ALL CLAIMS FOR A CHANGE IN THE CONTRACT PRICE AND/OR CONTRACT TIME DUE TO ADDITIONAL WORK PERFORMED WITHOUT A CHANGE ORDER THAT WAS SIGNED BY CITY UTILITIES BEFORE THE WORK WAS PERFORMED.**

10.2 RESIDENT 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. If CONTRACTOR believes that any minor change or alteration authorized by RESIDENT ENGINEER entitles him to an increase in the Contract Price or an extension of time, then CONTRACTOR shall not proceed with the changes or alterations without a signed Change Order.

10.3 Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract

Time, except in the case of an emergency as provided in paragraph 6.21 and except as provided in paragraph 13.7.

- 10.4 CITY UTILITIES shall execute appropriate Change Orders prepared by RESIDENT ENGINEER covering changes in the Work to be performed as provided in paragraph 4.3, and Work performed in an emergency as provided in paragraph 6.21 and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is approved by the GENERAL MANAGER.
- 10.5 It is CONTRACTOR'S responsibility to notify his 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. CONTRACTOR shall furnish proof of such adjustment to CITY UTILITIES.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 11.2 CITY UTILITIES may from time to time request CONTRACTOR to furnish a cost proposal for a possible future Change Order. Such a request for a proposal does not constitute a Change Order and does not authorize CONTRACTOR to proceed with the work described in the request. If requested by the RESIDENT ENGINEER the CONTRACTOR shall submit an itemized breakdown of material, equipment, labor, subcontractors, overhead, and profit, including supporting data, to substantiate his proposal. Any amount claimed for subcontractors shall be supported by a similar price breakdown. The itemized cost shall be in sufficient detail to enable the RESIDENT ENGINEER to verify the reasonableness of the CONTRACTOR'S proposal. If the proposal includes a time extension, a justification therefore shall also be furnished.
- 11.3 The Contract Price may only be changed by a Change Order. **CHANGE ORDERS FOR ADDITIONAL WORK THAT INCREASE THE CONTRACT PRICE MUST BE SIGNED BY THE PARTIES BEFORE THE ADDITIONAL WORK IS PERFORMED. CLAIMS FOR AN INCREASE IN THE CONTRACT PRICE DUE TO EMERGENCIES, WORK UNDER SECTION 13.7, OR DELAYS OR INTERFERENCE WITH THE WORK BY CITY UTILITIES, MUST BE MADE IN WRITING AND DELIVERED TO CITY UTILITIES WITHIN FIFTEEN (15) DAYS OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM.** The claim must state in detail the circumstances giving rise to the claim and all reasons that the Contractor believes justify an increase in the Contract Price. Within 45 days of such occurrence, Contractor must deliver to City Utilities a written statement of the amount of the claim with supporting data unless City Utilities grants an extension of the time period in writing **THERE SHALL BE NO OTHER CLAIMS FOR AN INCREASE IN THE CONTRACT PRICE. FAILURE TO FOLLOW THE ABOVE PROCEDURE SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIM FOR AN INCREASE IN THE CONTRACT PRICE.**

- 11.4 When the value of any Work covered by a Change Order is not expressed in money in the Order itself, changes in the Contract Price shall be determined in one of the following ways at the discretion of CITY UTILITIES:
- 11.4.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of the appropriate unit prices to the quantities of the items involved,
 - 11.4.2 By mutual acceptance of a lump sum determined from an agreed upon formula in the Change Order,
 - 11.4.3 On the basis of the Cost of the Work plus a percentage for the Contractor's overhead and profit. The method of determining costs of the Work and the percentage shall be established prior to starting any Work under the Change Order. On Projects which are funded or partially funded by an agency of the Federal Government, this method of pricing shall not be used.

COST OF THE WORK:

- 11.5 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 CITY UTILITIES, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.6
- 11.5.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by CITY UTILITIES and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, Workers' Compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. 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 CITY UTILITIES.
 - 11.5.2 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 CONTRACTOR unless CITY UTILITIES deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY UTILITIES. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and

equipment shall accrue to CITY UTILITIES and CONTRACTOR shall make provisions so that they may be obtained.

11.5.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by CITY UTILITIES, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to CITY UTILITIES which will then determine with the advice of RESIDENT 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 Cost of the Work shall be determined in accordance with paragraphs 11.5 and 11.6. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.5.4 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.

11.5.5 Supplemental costs including the following:

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

11.5.5.2 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 CONTRACTOR.

11.5.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY UTILITIES with the advice of RESIDENT ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof--all in accordance with 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.

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

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

11.5.5.6 Losses, damages and expenses, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY UTILITIES. No such losses, damages and expenses shall be included in the Cost of Work for the purpose of determining Contractor's fee. If, however, any such loss or damage required reconstruction and CONTRACTOR is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated in paragraph 11.6.2.

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

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

11.5.5.9 Cost of premiums for bonds and insurance which CITY UTILITIES is required to pay in accordance with Article 5.

11.6 The term "Cost of the Work" shall not include any of the following:

11.6.1 Roll costs and other compensation of 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 CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the schedule referred to in subparagraph 11.5.1--all of which are to be considered administrative costs covered by the Contractor's Fee.

11.6.2 Expenses of CONTRACTOR's principal and branch offices other than his office at the site.

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

- 11.6.4 Cost of Premiums for all bonds and for all insurance policies whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except as otherwise provided in subparagraph 11.5.5.9.).
- 11.6.5 Cost due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 11.6.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.5.

CONTRACTOR'S FEE:

11.7 The Contractor's Fee which shall be allowed to CONTRACTOR for his overhead and profit shall be determined as follows:

- 11.7.1 A mutually acceptable fixed fee; or if none can be agreed upon,
- 11.7.2 a fee based on the following percentages of the various portions of the Cost of the Work:
 - 11.7.2.1 for costs incurred under paragraphs 11.5.1 and 11.5.2, the Contractor's Fee shall be ten percent;
 - 11.7.2.2 for costs incurred under paragraph 11.5.3, the Contractor's Fee 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
 - 11.7.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.5.4, 11.5.5, and 11.6.

11.8 The amount of credit to be allowed by CONTRACTOR to CITY UTILITIES for any such change which results in a net decrease in costs, 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.

ARTICLE 12 - CHANGE OF THE CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order. **CLAIMS FOR AN INCREASE IN THE CONTRACT TIME DUE TO EMERGENCIES, WORK UNDER SECTION 13.7, DELAYS OR INTERFERENCE WITH THE WORK BY CITY UTILITIES, OR CAUSES BEYOND THE CONTRACTOR'S REASONABLE CONTROL, MUST BE MADE IN WRITING**

AND DELIVERED TO CITY UTILITIES WITHIN FIFTEEN (15) 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 CITY UTILITIES allows an additional period of time to ascertain more accurate data. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. **THERE SHALL BE NO OTHER CLAIMS FOR AN INCREASE IN THE CONTRACT TIME. FAILURE TO FOLLOW THE ABOVE PROCEDURE SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIM FOR AN INCREASE IN THE CONTRACT TIME.**

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if he makes a claim therefore as provided in paragraph 12.1. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by CITY UTILITIES, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God, unless provided otherwise.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

ARTICLE 13 - WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION; REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

WARRANTY AND GUARANTEE:

13.1 CONTRACTOR warrants and guarantees to CITY UTILITIES 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 paragraph 13.2. 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, test or approvals, shall be considered defective. Prompt notice of all defects shall be given to CONTRACTOR. Any defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

TESTS AND INSPECTIONS:

13.2 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be specifically inspected, tested, or approved by some public body, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish CITY UTILITIES the required certificates of inspection, testing or approval. All other inspections, tests and approvals required by the Contract Documents shall be borne by CITY UTILITIES unless otherwise specified.

13.3 CONTRACTOR shall give RESIDENT 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 approval of engineer, it must, if requested by RESIDENT ENGINEER, be uncovered for observation, and such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given RESIDENT ENGINEER

timely notice of his intention to cover such work and RESIDENT ENGINEER has not acted with reasonable promptness in response to such notice.

- 13.4 Neither observations by RESIDENT ENGINEER nor inspections, tests, or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

ACCESS TO WORK:

- 13.5 RESIDENT ENGINEER will at reasonable times have access to the Work. CONTRACTOR shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

UNCOVERING WORK:

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

- 13.7 If any Work has been covered which RESIDENT ENGINEER has not specifically requested to observe prior to its being covered, or if RESIDENT ENGINEER considers it necessary or advisable that covered Work be inspected or tested by others, CONTRACTOR, at RESIDENT ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as RESIDENT ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefore as provided in Articles 11 and 12.

OWNER MAY STOP THE WORK:

- 13.8 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, or if CONTRACTOR fails to make prompt payments to Subcontractors or for labor, materials or equipment, CITY UTILITIES may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY UTILITIES to stop the Work shall not give rise to any duty on the part of CITY UTILITIES to exercise this right for the benefit of CONTRACTOR or any other party.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

- 13.9 If required by RESIDENT ENGINEER prior to approval of final payment, CONTRACTOR shall promptly, without cost to OWNER, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected

by RESIDENT ENGINEER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from RESIDENT ENGINEER, CITY UTILITIES may have the deficiency corrected or the rejected Work removed and replaced. All direct and indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR, and an appropriate deductive Change Order shall be issued. CONTRACTOR shall also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

ONE YEAR CORRECTION PERIOD:

- 13.10 If, after the approval of final payment and prior to the expiration of one year after date of Substantial Completion or such longer period of time 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, CONTRACTOR shall promptly, without cost to CITY UTILITIES and in accordance with CITY UTILITIES' written instructions, either correct such defective Work, or, if it has been rejected by CITY UTILITIES, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, CITY UTILITIES may have the defective Work corrected or the rejected 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 CONTRACTOR.

ACCEPTANCE OF DEFECTIVE WORK:

- 13.11 If, instead of requiring correction or removal and replacement of defective Work, CITY UTILITIES prefers to accept it, it may do so. In such case, if acceptance occurs prior to approval of 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 approval of final payment, an appropriate amount shall be paid by CONTRACTOR to CITY UTILITIES.

NEGLECTED WORK BY CONTRACTOR:

- 13.12 If CONTRACTOR should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, CITY UTILITIES, after seven (7) days' written notice to CONTRACTOR may, without prejudice to any other remedy it may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against CONTRACTOR. In such 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 CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to CITY UTILITIES.

ARTICLE 14 - PAYMENTS AND COMPLETION

SCHEDULES:

- 14.1 At least ten (10) days prior to submitting the first Application for a progress payment, CONTRACTOR shall submit a progress schedule, a final schedule of Shop Drawing submission and a schedule of values of the Work. These schedules shall be satisfactory in form and substance to CITY UTILITIES. The schedule of values shall include quantities and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Items listed as lump sum in the schedules of values shall be paid as lump sum only upon completion of all work included under that item. Upon approval of the schedules of values by CITY UTILITIES it shall be incorporated into the form of application for payment furnished to CONTRACTOR.

APPLICATION FOR PROGRESS PAYMENT:

- 14.2 At least ten (10) days before each progress payment falls due (but not more often than once a month, CONTRACTOR shall submit to CITY UTILITIES 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 data and schedules as CITY UTILITIES' may reasonably require. 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 shall also be accompanied by such data, satisfactory to CITY UTILITIES as will establish CITY UTILITIES' title to the material and equipment and protect its interest therein, including applicable insurance. No payment will be made for mobilization, demobilization, or other such costs including bonds and insurance expenses without invoices documenting such costs from non-captive companies unless they do not exceed the 4% figure as stated in paragraph 14.2.1 below. Each subsequent application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the work have been applied to discharge in full all of CONTRACTOR's obligations reflected in prior Applications of Payment.

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK:

- 14.2.1 Contractor shall be reimbursed for actual costs incurred for mobilization and preparatory work. All mobilization costs are to be contained in the base bid. No additional reimbursements will be made. Only items described below are eligible for this payment.

If the total amount requested exceeds 4% of the Contract Price, the Contractor must then submit to the Resident Engineer certified accounts of the actual payments made by him. Requests for reimbursement must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agree that it will not be removed from the site and that structures and

facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Resident Engineer. If the Resident Engineer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency; payment, less the prescribed retained percentage, will be made therefore to the Contractor. Reimbursement for the construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Resident Engineer. In no event shall such payment exceed 100% of the cost to the Contractor of such items which have no appreciable salvage value and 75% of the cost to the Contractor of such items which have appreciable salvage value. The findings of the Resident Engineer as to the suitability and value of the construction plant, equipment, materials, structures or facilities shall not be subject to appeal.

Mobilization and preparatory work shall include construction plant at the site of the work, acquired for the execution of the work; the transportation of all plant and work equipment to the site; material purchased for the execution of the work not to be incorporated into the work; the transportation of all plant and work equipment to the site; material purchased for the prosecution of the contract, but not to be incorporated in the work; construction of access roads, field headquarters facilities and construction items for which payment is provided under the terms of the contract. This section number 14.2.1 shall not apply to electric, gas or water line or main distribution or service contracts bid as unit price work.

CONTRACTOR'S WARRANTY OF TITLE:

- 14.3 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 CITY UTILITIES 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").

APPROVAL OF PAYMENTS:

- 14.4 CITY UTILITIES will, within thirty (30) days after receipt of each Application for Payment, either make such progress payment to CONTRACTOR or return the application to CONTRACTOR indicating in writing its reasons for disapproval. CITY UTILITIES may withhold a percentage of not more than 10% from each progress payment as retainage. CITY UTILITIES may also refuse to approve any payment or nullify payments previously approved to adequately protect itself from loss because:

- 14.4.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,
- 14.4.2 claims or Liens have been filed or there is reasonable cause to believe such may be filed,
- 14.4.3 the Contract Price has been reduced because of Modifications,
- 14.4.4 CITY UTILITIES has been required to correct defective Work or complete the Work in accordance with paragraph 13.11, or
- 14.4.5 of unsatisfactory prosecution of the Work, including failure to furnish acceptable submittals or to clean up.

SUBSTANTIAL COMPLETION:

- 14.5 Prior to final payment, CONTRACTOR may, in writing to CITY UTILITIES, certify that the entire Project is substantially complete and request that CITY UTILITIES issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY UTILITIES and CONTRACTOR shall make an inspection of the Project to determine the status of completion. If CITY UTILITIES does not consider the Project substantially complete, it will notify CONTRACTOR in writing giving its reasons therefore. If CITY UTILITIES considers the Project substantially complete, it will prepare and deliver to CONTRACTOR a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion and the responsibilities between CITY UTILITIES and CONTRACTOR for maintenance, heat and utilities. There shall be attached to the certificate a tentative list (punch list) of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected, said time to be within the Contract Time. An additional list consisting of warranty repair items will also be provided to the CONTRACTOR. These warranty repair items will not be a sole basis to withhold final payment.
- 14.6 CITY UTILITIES shall have the right to exclude CONTRACTOR from the Project after the date of Substantial Completion, but CITY UTILITIES shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

PARTIAL UTILIZATION:

- 14.7 Prior to final payment, CITY UTILITIES may request CONTRACTOR in writing to permit it to use a specified part of the project which it believes it may use without significant interference with construction of the other parts of the Project. If CONTRACTOR agrees, he will certify to CITY UTILITIES that said part of the Project is substantially complete and request CITY UTILITIES to issue a certificate of Substantial Completion for that part of the Project. Within a reasonable time thereafter CITY UTILITIES, and CONTRACTOR shall make an inspection of that part of the Project to determine its status of completion. If CITY UTILITIES does not consider that it is substantially complete, it

will notify CONTRACTOR in writing giving its reasons therefore. If CITY UTILITIES considers that part of the Project to be substantially complete, it will execute and deliver to CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, attaching thereto a tentative list of items to be completed or corrected before final payment and fixing the responsibility between CITY UTILITIES and CONTRACTOR for maintenance, heat and utilities as to that part of the Project. CITY UTILITIES shall have the right to exclude CONTRACTOR from any part of the Project which it has so certified to be substantially complete, but CITY UTILITIES shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

FINAL INSPECTION:

- 14.8 Upon written notice from CONTRACTOR that the Project is complete, CITY UTILITIES will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

FINAL APPLICATION FOR PAYMENT:

- 14.9 After CONTRACTOR has completed all such corrections to the satisfaction of CITY UTILITIES and delivered all maintenance and operating instructions, schedules, guarantees, Bonds certificates of inspection, and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by such data and schedules as CITY UTILITIES may reasonably require, together with complete and legally effective releases or waivers of all Liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In lieu thereof and as approved by CITY UTILITIES CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY UTILITIES or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor materialman, fabricator or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY UTILITIES to indemnify him against any Lien.

APPROVAL OF FINAL PAYMENT:

- 14.10 Approval of Final Payment will be processed as described in paragraph 14.4. If, on the basis of its observation and review of the Work during construction and its final inspection and review of the final Application for Payment - all as required by the Contract Documents, CITY UTILITIES is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of its obligations under the Contract Documents, it will within thirty (30) days after receipt of the final Application for Payment make final payment to CONTRACTOR. Thereupon CITY UTILITIES will give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.13.

Otherwise, CITY UTILITIES will return the Application to CONTRACTOR, indicating in writing its reasons for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

- 14.11 If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of CONTRACTOR, CITY UTILITIES shall, without terminating the Agreement, make payment of the balance due or that portion of the Work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the CITY UTILITIES prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

CONTRACTOR'S CONTINUING OBLIGATION:

- 14.12 CONTRACTOR's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by CITY UTILITIES, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY UTILITIES to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Project or any part thereof by CITY UTILITIES nor any act of acceptance by CITY UTILITIES nor any failure to do so, nor any correction of defective work by CITY UTILITIES shall constitute an acceptance of Work not in accordance with the Contract Documents.

WAIVER OF CLAIMS:

- 14.13 The making and acceptance of final payment shall constitute:
- 14.13.1 a waiver of all claims by CITY UTILITIES against CONTRACTOR other than those arising from unsettled Liens, from defective work appearing after final inspection pursuant to paragraphs 14.8 and 14.12 or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and
- 14.13.2 a waiver of all claims by CONTRACTOR against CITY UTILITIES other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION; CITY UTILITIES MAY SUSPEND WORK

- 15.1 CITY UTILITIES may, at any time without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. 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 he makes a claim therefore as provided in Articles 11 and 12.

OWNER MAY TERMINATE:

- 15.2 If CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of RESIDENT ENGINEER, or if he otherwise violates any provision of the Contract Documents, then CITY UTILITIES may, without prejudice to any other right or remedy and after giving CONTRACTOR and his Surety seven (7) days' written notice, terminate the services of CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR, and finish the Work by whatever method it may deem expedient. In such case CONTRACTOR shall not be entitled to received any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to CITY UTILITIES. Such costs incurred shall be determined by CITY UTILITIES and incorporated in a Change Order.
- 15.3 Where CONTRACTOR'S services have been so terminated by CITY UTILITIES, said terminations shall not affect any rights of CITY UTILITIES against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys by CITY UTILITIES due CONTRACTOR will not release CONTRACTOR from liability.
- 15.4 Upon seven (7) days' written notice to CONTRACTOR, CITY UTILITIES may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

CONTRACTOR MAY STOP WORK OR TERMINATE:

- 15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by CITY UTILITIES or under an order of court or other public authority, or if CITY UTILITIES fails to act on any Application for Payment within thirty (30) days after it is submitted, then CONTRACTOR may, upon seven (7) days' written notice to CITY UTILITIES terminate the Agreement and recover from CITY UTILITIES payment for all Work executed and any expense sustained plus a reasonable profit. In addition, and in lieu of terminating the Agreement, if CITY UTILITIES has failed to make any payment as aforesaid, CONTRACTOR may upon seven (7) days' notice to CITY UTILITIES stop the Work until he has been paid all amounts then due.

ARTICLE 16 - MISCELLANEOUS - GIVING NOTICE

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

COMPUTATION OF TIME:

16.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period.

GENERAL:

16.3 All specifications, Drawings and copies thereof furnished by CITY UTILITIES shall remain its property. They shall not be used on another Project, and, with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to CITY UTILITIES on request upon completion of the Project.

16.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.10 and 14.3 and the rights and remedies available to CITY UTILITIES thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

16.5 The Contract Documents shall be governed by the laws of the State of Missouri. The venue for all actions arising out of the Contract Documents shall be the state and federal courts of Greene County, Missouri.

16.6 Provisions which, by their nature, are intended to survive termination or expiration of the Contract Documents, including, without limitation, Sections 5.3, 5.4, 6.12, 6.29, 6.30, and 14.13 and Articles 16 and 17, shall survive termination or expiration of the Contract Documents.

ARTICLE 17 - RESOLUTION OF DISPUTES

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give a reasoned opinion and submit a finding of facts and conclusions of law.

