

## SECTION 00830

### GENERAL PROVISIONS

#### 1. DEFINITION OF TERMS

- 1.1 Definitions.** Wherever the words, forms or phrases defined or pronouns used in their stead, occur in these specifications, in the contract or in the advertisement or any document, or instrument herein contemplated or to which these specifications apply, the intent and meaning shall be construed and interpreted as set forth in this section.
- 1.2 Addenda.** Any change in specifications after advertisement for bids which modify or interpret the contract documents, drawings or specifications by additions, deletions, clarifications, or modifications. After issuance, any addenda shall become a part of the specifications, as much as though fully contained therein.
- 1.3 Administrator.** The Administrator of the Department of the City of Chattanooga under whose general administration and observation this contract is being performed.
- 1.4 Award.** The formal acceptance of the proposal of the lowest responsible bidder by the City Council, subject to the execution and approval of a satisfactory contract and the required bonds therefor, and following such other conditions as may be specified or otherwise required by law.
- 1.5 Bid.** The offer or proposal of the Bidder submitted on the prescribed Bid Proposal Form setting forth the Contract Price(s) for the work to be performed under these Contract Documents.
- 1.6 Bonds.** Bid, Performance, and Payment Bonds and other instruments of security to be furnished by the contractor in accordance with the Contract Documents.
- 1.7 Change Order.** A written agreement, executed by the City, the Contractor, the Engineer and the Architect authorizing an addition, deletion, or revision of the work within the general scope of the Contract Documents or authorizing an adjustment in the contract price or the contract time. This "change order" becomes a part of the contract when properly executed and approved.
- 1.8 City.** The City of Chattanooga, Tennessee.
- 1.9 City Attorney.** The person duly authorized by the City to act in the capacity of City Attorney, his authorized designee, or special counsel to the City, acting severally within the scope of the particular duties entrusted to them.
- 1.10 Contract.** The written agreement between the City and the Contractor for the performance of the work in accordance with the requirements of the Contract Documents, and for the payment of the agreed consideration therefore.

Whenever, in any portion of the Contract Documents, a requirement of the Contract is stated, it shall be interpreted to mean a requirement of the Contract Documents as defined herein, unless the context indicates the more restricted definition of that portion of the Contract Documents which is captioned "Contract."

- 1.11 Contract Documents.** The Contract, Advertisement for Bids, Instructions to Bidders, Bid Proposal and Proposal Documents, Bid Bond, Performance Bond, Payment Bond, Certificates, General Provisions, Supplementary General Provisions, Specifications, Drawings, Addenda, Change Orders, Notice to Proceed, and Specifications, Drawings and Engineering Data furnished by the Contractor and accepted by the Owner. Whenever, in any portion of the Contract Documents, the terms "plans and specifications" or "specifications" or "contract" or words of like import appear, they shall be interpreted to mean "Contract Documents" as defined herein unless the context indicates that a more restrictive designation of a particular portion of the Contract Documents is intended.
- 1.12 Contract Time.** The number of calendar days allowed by these Contract Documents, including authorized time extensions, for the completion of the work sufficient to be accepted as substantially complete by the Owner. The Contract Time shall begin ten (10) days after the date of issuance of the Notice to Proceed.
- 1.13 Contractor.** The person, firm, or corporation whose proposal is accepted by the Owner and who entered into a Contract with the Owner for performance of the work covered by and in conformance with these Contract Documents.
- 1.14 Engineer.** The City Engineer (or when retained by the City, an Architect or consulting engineer) and his duly authorized assistants, observers, inspectors or administrators acting severally within the scope of the particular duties entrusted to them.
- 1.15 Inspector.** An authorized representative of the Engineer assigned to make necessary observations of the work performed by the Contractor.
- 1.16 Multiple Awards.** The City reserves the right to award more than one contract from a single solicitation. Multiple Awards are the formal acceptance by the City Council of the proposal of the lowest responsible bidder for each individual bid item, subject to the execution and approval of a satisfactory contract and the required bonds therefore, and following such other conditions as may be specified or otherwise required by law.
- 1.17 Owner.** The City of Chattanooga, Tennessee.
- 1.18 Plan or Plans.** All of the drawings pertaining to the contract showing the scope and characteristics of the work or a part thereof, including such supplementary drawings as the Engineer may issue in order to elucidate other drawings or for the purpose of showing the changes in the work or for showing details not shown thereon.

- 1.19 Shop Drawings.** All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, a Manufacturer, a Supplier, or a Distributor, which illustrate how specific portions of the work shall be fabricated or installed. Shop drawings may also mean detail drawings, working drawings, construction drawings, and engineering data.
- 1.20 Specifications.** The written directions, provisions and requirements contained herein pertaining to the method and manner of performing the work or to the quantities or qualities of materials, equipment, construction systems, standards or workmanship to be furnished under the contract.
- 1.21 Special Provisions.** The special clauses setting forth conditions or requirements peculiar to the specific project, supplementing the General Provisions and taking precedence over any condition or requirements of the General Provisions with which they are in conflict.
- 1.22 Subcontractor.** The person, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for performing a part of the work covered by these Contract Documents at the site.
- 1.23 Substantial Completion.** The date of completion of the work in conformance with the Contract Documents, as determined by the Owner or Engineer, when the project or a specified part thereof can be utilized for the purposes for which it is intended.
- 1.24 Supplemental General Provisions.** Modifications to these standard General Conditions.
- 1.25 Surety or Sureties.** The corporate body which is bound by such bonds as are required with and for the contractor, and which engages to be responsible for the entire and satisfactory fulfillment of the contract and for any and all requirements as set out in the specifications, contract or plans.
- 1.26 The Work.** The Work, including the furnishing of labor, materials, tools, and incidentals, necessary or required to complete the improvement in conformity with the directions, provisions and requirements of the specifications, limitations and conditions of the contract and in accordance with the intent of the plans.
- 1.27 Working Day.** Any day, other than a legal holiday or Sunday, on which the approximate normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the work, unless work be suspended for causes beyond the contractor control.

## **2. PROPOSAL REQUIREMENTS AND CONDITIONS**

- 2.1 Contents of Proposal Form.** The City will furnish bidders with proposal forms which will state the general location and description of the contemplated work.
- 2.2 Interpretation of Estimate.** The quantities of the work and materials shown on the proposal form or on the plans are believed to approximately represent the work to be performed and materials to be furnished and are to be used for

comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased or portions of the work omitted as hereinafter provided without in any way invalidating the bid prices. When the Bid Proposal Form contains the provision for receiving bids based on a lump sum price, the Contractor shall be held responsible for having prepared his own estimate of the quantities necessary for the satisfactory completion of the work specified in these Contract Documents and for having based the lump sum price bid on his estimate of quantities.

- 2.3 Examination of Documents and Site of the Work.** Bidders are advised that the plans, specifications, estimates, addenda and bulletins of the Engineer shall constitute all the information which the City will furnish. No other information given by the City or any official thereof, prior to the execution of the contract shall ever become a part of or change the contract, plans, specifications or estimates or be binding upon the City. Bidders are required, prior to submitting any proposal, to read carefully the specifications, the proposal, and other contract documents; to examine carefully all estimates open for examination and all plans on file in the Engineer's office; to visit the site of the work, to examine carefully local conditions; to inform themselves by their independent research of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or the time required for its completion and obtain all information required to make an intelligent proposal. Bidders shall rely exclusively upon their own estimates, investigation and other data which are necessary for full and complete information upon which the proposal may be based. It is mutually agreed that submission of a proposal will be evident that the bidder has made the examination and investigations required herein.
- 2.4 Preparation of Proposal.** The bidder shall submit his proposal on the forms furnished by the City with all blank spaces in the proposal form correctly filled in. Bid prices shall be either typed or legibly written with ink, both in words and in numerals, for which it is proposed to do the work contemplated or furnish the materials required. In case of conflict between words and numerals, the words will govern. Proposals shall be submitted in a sealed envelope which has the completed "Contractor's Identification" form securely attached thereto.
- 2.5 Proposal Guaranty.** Proposals will not be considered unless accompanied by a certified or cashier's check on a duly organized bank payable to the order of the City of Chattanooga, Tennessee, or bidding bond made by some bonding company authorized to transact business in the State of Tennessee, for a sum of not less than five percent of the total amount of the bid. The proposal guaranty is required as evidence of good faith and as a guarantee that, if awarded the contract, the bidder will execute the contract and furnish the required bonds within ten (10) days after the award.
- 2.6 Filing of Proposal.** No proposals will be considered by the City unless they are filed in sealed envelopes with the City within the time limit for receiving proposals as stated in the advertisement and shall be made on proposal forms attached to Specifications, together with the Contract Documents, Bid Bond, and Statement

of Compliance with General Contractors Licensing Law and other required miscellaneous forms, all of which are to be sealed in an envelope addressed to the City of Chattanooga, Tennessee, with the completed "Contractor's Identification" form securely attached thereto.

Each proposal must contain the full name and address of each person, firm or corporation interested therein. In case of a partnership, the name and address of each partner must be stated. The firm, corporation or individual name of the bidder must be signed in the space provided for the signature on the proposal blank. In case of a corporation, the title of the officer signing must be stated, and the person signing shall also state under the laws of what State the corporation was chartered and the names and titles of the officers having authority, under the by-laws, to sign contracts. The proposal shall also be attested by its Secretary. In case of a partnership or firm, the signature of at least one of the partners must follow the firm name.

- 2.7 Withdrawal of Proposal.** Permission will not be granted to withdraw or modify any proposal after it has been filed and before time set for opening of proposals. Requests for non-consideration must be made in writing addressed to and filed with the City before the time set for opening the proposals. After other proposals are opened and read, the proposal for which withdrawal is properly requested will be returned unopened.
- 2.8 Opening of Proposals.** The proposals filed with the City will be opened at the time stated in the advertisement. Bidders are invited to attend the meeting at the time set for opening of proposals, at which time they should make any protests as to procedure followed in inviting bids.
- 2.9 Irregular Proposals.** Proposals will be considered irregular if they show any omissions, alterations of forms, additions or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the City reserves the right to waive technicalities and make the award in the best interest of the City.
- 2.10 Rejection of Proposals.** The City reserves the right to reject any or all proposals, and all proposals submitted are subject to this reservation.
- 2.11 Disqualification of Bidders.** Bidders may be disqualified and their proposal not considered for any of the following specific reasons:
- A. Failure to complete and sign any of the following forms:
    - 1. Equipment Statement
    - 2. State License Certificate
    - 3. Proposal
    - 4. Affidavit of No Collusion by Bidder

- B. Where more than one proposal for an individual, firm, partnership or corporation is filed under the same or different names and where such proposals are not identical in every respect.
- C. Where the bidder is in arrears on any existing contracts, interested in any litigation against the City or having defaulted on a previous contract.
- D. A failure to have adequate equipment.
- E. Uncompleted work which in the judgment of the City will hinder or prevent prompt completion of additional work, if awarded.

Nothing herein shall be deemed to limit the discretion of the City to determine whether or not a bidder not hereby disqualified is the lowest responsible bidder.

**2.12** Conditions Precedent to Award of Contracts. The following stipulations shall all and severally be conditions precedent to the award by the City of Chattanooga of all contracts for construction, to-wit:

- A. No member of the City Council nor any officer, director or other person whose duty it is to vote for, let out, overlook or in any manner superintend this contract and who is related to said member within the third degree by either consanguinity or affinity, nor any other official who may be directly interested in this contract or work of any kind whatsoever under its direction. "Directly interested" means any contract with the official himself or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.
- B. It shall not be lawful for any officer, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which the City shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his interest and rescues himself from any of his duties which include the consideration of, voting on, letting out, overseeing, or superintending the work or contract giving rise to the conflict. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county. (See T.C.A. Section 12-4-101, et seq.)
- C. The essence of all the contracts shall be excellence of quality, integrity and durability of the completed product as specified; and the contractor hereunder shall be held responsible therefor.
- D. The contractor shall maintain and guarantee the integrity of the completed work for a full period of one year after the completion as set forth more fully in Section 4 of these General Provisions.

- E. The decisions of the Engineer, as to quality, integrity and durability of the work shall be final and conclusive as to all parties to said contract, whether it be directly by and between the contractor and said City or by and between him and another party; and said Engineer shall have full authority to condemn by written notice to contractor, or his agent or foreman on job, and shall order the removal, reconstruction and restoration of all work that in his opinion, is in any respect inferior, defective or faulty, or that shows signs of disintegration and failure, at any time before final estimate is issued and payment made therefor, or within a period of one year after the completion and acceptance thereof in writing by the City.
- F. Contractor shall remove, reconstruct and restore all such condemned work in full conformance with the specifications, and in complete compliance with the requirements of the official notice, in writing, of said Engineer relating thereto, and within the period of time designated in the notice.

Should the contractor neglect, refuse, or fail to remove, reconstruct and restore all of the defective work so condemned and rejected, within the period of time, as required by said official notice, then and in event of such failure on contractor's part, whether said work was executed by contract directly with the City or by private contract directly with other parties, the City of Chattanooga will look to and require, respectively, the surety on the Performance Bond, executed by the contractor under contract directly with said City, to make good and have all such defective and condemned work removed, reconstructed and restored in complete compliance with the requirements of the official notice of said Engineer to that effect; and likewise, in the event that such work was done under private contract, as aforesaid, the City of Chattanooga will look to and require the surety on the Performance Bond executed by said contractor to make good and have all such defective and condemned work removed, reconstructed and restored in complete compliance with the requirements of the official notice of said Engineer to that effect, in each instance as the case may be.

- G. The unit price bid by the contractor for any and all work and the compensation to be paid therefor shall cover and include the cost of all materials, forms, supports, labor, work and things necessary for a complete workmanlike job, and shall also include the cost of all services, duties and obligations of said contractor and of the corresponding surety on the Performance Bond collateral therewith as stipulated in subsections above set out, to the satisfaction and approval of the Engineer.

### **3. AWARD AND EXECUTION OF CONTRACT**

- 3.1 Consideration of Proposal.** After the proposals are opened, the unit prices will be tabulated for comparison on the basis of the quantities shown in the approximate estimate. Until the final award of the contract, the City reserves the right to reject any and/or all proposals, to waive technicalities; and to advertise for new proposals or to have the improvements done by said City.

**3.2 Award of Contract.** The City acting by and through the City Council will either award the contract or reject all proposals received thereon after the formal opening of proposals and evaluation of the bids.

The award of the contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with the requirements of the City.

Projects will be awarded only to responsible bidders, and an award will not be made in any case, until all necessary investigations have been made into the responsibility of the low bidder.

If the project is funded in part by a state or federal grant, then the award may be subject to the concurrence of the granting contract agency.

All references to contract include each to be awarded where multiple awards are made.

**3.3 Return of Proposal Guaranty.** As soon as the proposal prices have been compared, the Engineer may, in his discretion, return the proposal guaranties accompanying those proposals which in his judgment would not be considered in making the award. After the award is made, only each successful bidder's proposal will be retained until the required contract and bonds have been executed, after which it will be returned to the bidder.

**3.4 Surety Bonds.** With the execution and delivery of the contract, the contractor shall furnish and file with the City in the amount herein required, the following bonds which must be approved by the City Attorney.

A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total amount of the contract, guaranteeing the full and faithful execution of the work and performance of the contract according to its terms, which bond shall remain in effect for twelve (12) months after the completion of the work.

A good and sufficient Payment Bond in an amount equal to one hundred (100%) percent of the total amount of the contract, guaranteeing full payment for all of the labor and materials used in the performance of the work and all other charges incurred under this contract.

No surety will be accepted who is now in default or delinquent on any bond. All bonds shall be executed by surety companies licensed to do business in the State of Tennessee and acceptable to the City Attorney, and in the event the contract is funded in part by federal or state grants, then said bonds must also be satisfactory to the granting agency. Each bond shall be executed by the contractor and the surety.

Should any surety on the contract be determined unsatisfactory at any time by the City, notice will be given to the contractor to that effect and the contractor shall forthwith substitute a new surety or sureties satisfactory to the City Attorney. No payment will be made under the contract until the new surety or sureties, as required, have qualified and been accepted by the City Attorney.



**3.5 Execution of Contract.** The contract shall be made in the name of the City of Chattanooga, and shall be executed on behalf of the City by the Administrator following approval by the City Council.

**3.6 Failure to Execute Contract.** Upon failure of the bidder to execute the required bonds or to sign the required contract within ten (10) days after the contract is awarded, he will be considered to have abandoned his proposal and the City may annul the award. By reason of the uncertainty of market prices of materials and labor, and it being impracticable and extremely difficult to fix the amount of damages to which the City would be put by reason of said bidder's failure to execute said bonds and contract within ten (10) days, the proposal guaranty accompanying the proposal shall be the agreed amount of damages which the City will suffer by reason of such failure on the part of the bidder and shall thereupon immediately be forfeited to the City. The filing of a proposal will be considered as an acceptance of this provision.

#### **4. SCOPE OF WORK**

**4.1 Intent of Contract Documents.** The intent of the contract documents including the plans and specifications is to prescribe a complete work or improvement which the Contractor undertakes to do, in full compliance with the contract documents. The Contractor shall do all the work as provided in the plans, specifications, proposal and contract and shall do such additional, extra and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. He shall furnish all labor, materials, products, supplies, tools, equipment and incidentals necessary to the prosecution of the work.

The Contractor shall provide all work and materials not shown in detail but necessary for completion of the project as indicated or specified including a proper and suitable foundation preparation, base or support and a reasonable finish consistent with adjacent work which is shown or specified. The Contractor shall make plural and complete all work which, to avoid needless repetition or for the sake of brevity, has been shown singly or partially indicated. The Contractor shall follow the drawings and execute all work in strict accordance therewith and with the kind and quality of materials indicated and specified. Materials or work described in words which, when so applied, have a well-known technical or trade meaning shall be held to refer to such recognized standards. Any deviation from the Drawings, Specifications, and other Contract Documents which may be required by the exigencies of construction, shall in all cases conform to the written instruction of the Engineer. The applicable provisions of the Contract Documents shall apply with equal force to all work, including extra work, performed under these Contract Documents, whether performed either directly by the Contractor or by any Subcontractor.

**4.2 Special Provisions.** Should any work or any condition which is not thoroughly or satisfactorily stipulated or covered by the Standard Specifications be anticipated on any proposed work, "Special Provisions" for such work may be prepared and shall be considered as a part of the specifications and contract, the same as though contained fully therein.

- 4.3 Increase or Decrease Quantities.** The City shall have the right to increase or decrease the amount of work to be done under these Contract Documents at any time or times during the life of the Contract, when and as found necessary and the Contractor shall perform the work as altered, increased or decreased at the contract unit price. The City shall have the right to delete any bid item in its entirety.

Any such changes will be set forth in a Change Order which will specify, in addition to the work to be done in connection with the changes made, adjustment of contract time, if any, and the basis of compensation for such work, if any. A Change Order will not become effective until approved by the City. After approval, the Change Order will become a part of the Contract Documents.

- 4.4 Alterations of Plans and Specifications.** The City reserves the right, at any time, to make such changes in the plans and the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract.

- 4.5 Extra Work.** When any work is necessary to the proper completion of the project of which no prices are provided in the proposal or contract, the Contractor shall do such work, but only when and as ordered by the Engineer. Payment for the extra work will be made as hereinafter provided.

Extra work is defined as: (1) that additional work of a different character or function or for that work for which no basis of payment is prescribed in these Contract Documents; such as a lump sum contract, or (2) that work involving revisions of the details of the work in such manner as to render inequitable payment under items upon which the Contractor bid; or (3) that additional work of a similar nature and character as that done under the unit prices named in these Contract Documents. (See para. 8.9 of this Section)

No claim for extra work will be considered unless said extra work was ordered in writing as aforesaid, and the claim presented in writing to the Engineer within 30 days after receipt by the Contractor of the written order to perform said extra work.

If the performance of the extra work results in additional time being required by the Contractor to complete the work covered by these Contract Documents, said Change Order will provide for an equitable extension in the contract time.

- 4.6 Final Cleaning Up.** Upon completion of the work and before acceptance and final payment will be made, the Contractor shall clean and remove from the site of the work surplus and discarded materials, temporary structures, stumps or portions of trees and debris of any kind. He shall leave the site of the work in a neat and orderly condition and shall obtain a signed release from the owners of private property upon which the work has been done. Waste materials removed

from the site of the work shall be disposed of at locations satisfactory to the Engineer.

- 4.7 Maintenance of the Work.** The Contractor shall maintain the work during construction and until the work is accepted. The notice of final acceptance by the City shall also notify him that he is relieved of the maintenance except as otherwise provided in Section 4.8. Portions of the work shall be opened for use by the City or the general public, and this shall not be interpreted to mean that the Contractor is relieved of maintenance.

All costs of maintenance work during construction and before the work is finally accepted shall be included in the Contract Price bid for the work, and the Contractor will not be paid any additional amount for maintenance work.

- 4.8 Maintenance of the Work After Completion.** The Contractor shall maintain and keep in good repair the work covered by these Contract Documents for a period of one (1) year from the date of acceptance by the City. The Contractor shall promptly (a) perform all necessary work, (b) repair or replace all defective materials or products, and (c) correct any defective condition resulting from defective materials, products, work, or labor performed by the Contractor under these Contract Documents which may appear or be discovered during said period. It is further understood and agreed that the Contractor shall fully indemnify, protect, defend, save and hold harmless the City, the Engineer, and their agents and employees from all liabilities on account of injury to persons, loss of life, or damage to property resulting from said defective conditions or failure to promptly correct said defective conditions.

The Contractor will not be required to perform any routine maintenance, repairs resulting from normal wear and tear, or repairs necessary due to acts of the City, its employees, or agents.

- 4.9 Guarantee.** The Contractor shall guarantee the equipment, materials, products, and workmanship furnished under these Contract Documents to be as specified and to be free from defects for a period of one year after the date of final acceptance by the City. In addition, the equipment furnished by the Contractor shall be guaranteed to be free from defects in design.

Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Engineer or the City, arose out of defects and became necessary during the guarantee period.

The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the Surety.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each such repair or replacement shall be one year after installation or completion of said repair or replacement.

If within ten (10) days after the City has notified the Contractor of a defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, or if the Contractor fails to complete the repairs or adjustments in a timely and satisfactory manner, it is understood and agreed that the City is hereby authorized to make the repairs or adjustments or to order the work to be done by a third party, the cost of the work to be paid by the Contractor or by the Surety.

In the event of an emergency that occurs when the Contractor or his representative cannot be immediately contacted, and where the emergency is such that, in the sole judgment of the City, delay could cause serious loss or damage or presents an imminent hazard to others, repairs or adjustments may be made by the City, or a third party chosen by the City, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or by the Surety.

## **5. CONTROL OF WORK AND MATERIALS.**

**5.1 Authority of the Engineer.** The Engineer shall administer the Contract. All work shall be done to the satisfaction of the Engineer. The Engineer shall consult with the Architect or other Project Engineer when appropriate, and the Engineer shall decide all questions which arise as to quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of construction, interpretation of plans and specifications, acceptable fulfillment of the contract, compensation and suspension of work. He shall determine the amount and quality of work performed and materials furnished, and his decision and estimates shall be final.

The Contractor may request and shall receive written instructions from the Engineer upon any important item.

**5.2 Conformity With Plans; Allowable Deviations.** All work shall conform to the lines, grades, cross-sections and dimensions shown on the plans. Any deviation from the plan which may be required by the exigencies of construction will be determined by the Engineer and authorized by him in writing.

**5.3 Coordination and Interpretation of Contract Documents.** The parts of the Contract Documents are complementary, each part being an essential part of these Contract Documents which are intended to describe and provide for a complete work. A requirement occurring in one is as binding as though occurring in all.

The Contractor shall carefully study and compare all Drawings, Specifications, and other instructions; shall test all figures on the Drawings before laying out the work; shall notify the Engineer of all errors, inconsistencies, or omissions which he may discover; and shall obtain specific instructions before proceeding with the work. The Contractor shall not take advantage of any error or omission which may be found in the Drawings or other Contract Documents. The Engineer will make such corrections therein and interpretations thereof as he may deem necessary for the fulfillment of the intent of the Contract Documents, and his interpretations shall be final. The Contractor shall be responsible for all errors in

construction which could have been avoided by such examination and notification and shall correct at his own expense all work improperly constructed through failure to notify the Engineer and request specific instruction.

In case of unresolved conflict between items of the Contract Documents, the following order of precedence shall govern, with the higher item taking precedence over a lower item:

- Contract (including Supplemental Agreements and Change Orders thereto)
- Addenda
- Bid Proposal
- Supplementary General Provisions
- General Provisions
- General Conditions
- Specifications
- Governing Standard Specifications
- Schedules on Drawings
- Notes on Drawings
- Details on Drawings
- Large Scale Drawings
- Small Scale Drawings
- Dimensions Given in Figures
- Scaled Dimensions

In the event of any discrepancy between any drawing and the figure written thereon, the figures, unless obviously incorrect, shall be taken as correct.

When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the site, and the actual job dimensions shall take precedence over scale and figure dimensions on the Drawings.

Wherever a stock size of manufactured item or piece of equipment is specified by its nominal size, it shall be the responsibility of the Contractor to determine the actual space requirements for setting and for entrance to the setting space and to make all necessary allowances and adjustments therefor in his work without additional cost to the City.

**5.4 Governing Standard Specifications.** The Governing Standard Specifications specified herein shall be considered a part of these Specifications and other Contract Documents the same as if herein repeated.

All materials and other work and the prosecution and control of the work shall be in conformance with the applicable requirements of Governing Standard Specifications unless specifically modified or superseded in these Contract Documents. In case of conflict between the Governing Standard Specifications and other parts of these Contract Documents, these Specifications and other Contract Documents bound herein shall govern. All sections of Governing Standard Specifications relating to measurement and payment shall not apply to the work specified herein. Where terms such as Engineer, Purchaser, City,

Department, or other terms of similar import are used in the Governing Standard Specifications, it shall be understood that they will be appropriately interpreted to mean the City or the Engineer as specified herein.

Various Governing Standard Specifications referred to throughout these Contract Documents are frequently indexed by number and year (i.e., AWWA C110-71). When the year has not been designated or no year is associated with the referenced specification, the Governing Standard Specification in effect on the date of the Advertisement shall govern. Tentative specifications shall be construed as current unless otherwise noted. Where obsolete Federal Specifications have been referenced, they shall be superseded by the Federal Specification in effect on the date of the Advertisement.

All standard specifications, manuals, standard details, publications, or other standard items referred to in the Drawings or other Contract Documents shall be considered a part of these Contract Documents the same as if herein repeated.

**5.5 Authority of the City Engineer.** If the City has retained an Architect or consulting engineer to assist the City Engineer in administering the contract, then the authority of the City Engineer should be as specified herein. If the administration of the contract is performed by the City Engineer without having an Architect or consulting engineer, then the authority of the City Engineer shall be as specified in this section and the following section captioned "Authority of the Project Engineer." The general administration and observation of the performance and execution of the work under these Contract Documents is vested in the City Engineer. The detailed administration and observation of the performance and execution of the work is vested in the Project Engineer as set forth below.

The City Engineer may authorize a person to act as the City Engineer's authorized representative or agent in carrying out the duties specified in these Contract Documents. The instructions of the City Engineer, or authorized representative, shall be strictly and promptly followed in every case.

The City Engineer, or authorized representative, shall have authority to suspend operations at any time, without additional cost to the Owner, when the work, in the City Engineer's opinion, is not being carried out in conformity with the Drawings, Specifications, and other Contract Documents.

The City Engineer, or authorized representative, may appoint Inspectors as are necessary to observe the performance of the work under these Contract Documents and the amount, character, and quality of materials supplied.

**5.6 Authority of the Project Engineer.** The Project Engineer (severally referred to in the Contract documents simply as "Engineer") is an Architect, consulting engineer, or other person designated by the City to perform certain duties of the City, specified herein, as a duly authorized representative or agent of the City. When such specified duties are indicated herein to be performed by the "Engineer" or by the City's "authorized representative," said duties shall be performed by the Project Engineer acting for the City and solely as an agent or representative of the City. The City may specifically designate that other duties

will be performed by the Project Engineer by notifying the Contractor and the Project Engineer that said duties will be performed by the Project Engineer.

The Project Engineer shall have free access to the materials and the work at all times for measuring or observing the same, and the Contractor shall afford him all necessary facilities and assistance for so doing. After written authorization to proceed with the work, the Project Engineer shall:

- A. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he will appoint a Resident Project Representative and Inspectors to make periodic and timely on-site observations to check the quality and quantity of the work; he will not supervise the contractor's work; he will not act as foreman or superintendent for the Contractor, nor will he manage or interfere with management of the contractor's work; he will not be responsible for the techniques, construction means, methods, sequences or procedures, time of performance, or the safety precautions and programs incident thereto; and he will not be responsible for the Contractor's failure to perform the construction work in accordance with the Contract Documents. During such visits and on the basis of his on-site observations and professional judgment, the Project Engineer will keep the City informed of the progress of the work, will exercise reasonable care to guard the City against defect and deficiencies in the work of the Contractor, and will advise the City immediately verbally and by written notifications of any work he knows to be defective or not conforming to the requirements of these Contract Documents.
- B. Review engineering data, samples, catalog data, schedules, shop drawings, laboratory, shop, and mill tests of materials and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by these Contract Documents; and assemble written guarantees which are required by these Contract Documents.
- C. Advise and consult with the City during the performance of the work; and act as the City's representative to issue instructions of the City to the Contractor.
- D. Based on his on-site observations and on his review of the Contractor's payment requests, determine the amount owed to the Contractor and approve in writing payment to the Contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review and the data comprising such requests, that the work has progressed to the point indicated and that, to the best of his knowledge, information, and belief, the quality of the work is in accordance with these Contract Documents, subject to the results of any subsequent test called for in these Contract Documents and any qualifications stated in his approval.
- E. Conduct, in company with the City, a final inspection of the project for conformance with the design concept of the project and compliance with the

information given by these Contract Documents, and approve a Final Payment request.

F. Prepare and submit for the City's approval proposed change orders.

**5.7 Authority and Duties of Resident Project Representative.** The Resident Project Representative and Inspectors are authorized to observe all work done and materials furnished under these Contract Documents, but will not be on-site at all hours the work is in progress. Such observation will extend to all or to any part of the work and when appropriate to the preparation, fabrication, or manufacture of the materials or products to be incorporated in the work.

The authority and duties of the Resident Project Representative and Inspectors are to examine the materials and products furnished, observe the work done, call to the attention of the Contractor any deviation from these Contract Documents and report the results of the examinations and observations to the Engineer.

The Resident Project Representative and/or Inspectors will not be authorized to revoke, alter, enlarge, or relax any requirements of these Contract Documents, nor to approve or accept any portion of the work, nor will they be authorized to issue instructions contrary to these Contract Documents. They will in no case act as foremen nor will they interfere with management of the work.

**5.8 Inspection.** The Engineer and authorized representatives thereof shall be given every facility for ascertaining whether or not the work performed and materials used are in accordance with the requirements and intent of these Contract Documents.

Failure of the Engineer or authorized representatives during the progress of the work to discover defects or deficiencies in the work or to reject materials, products, or work not in accordance with these Contract Documents shall not be considered to relieve the Contractor, under any circumstances, from his obligations under these Contract Documents or the acceptance thereof or a waiver of defects therein; and payment to the Contractor or partial or entire occupancy by the City shall not be construed to be an acceptance of the work or materials which are not strictly in accordance with these Contract Documents.

Moreover, the undertaking of inspections by the Engineer or authorized representatives thereof shall not be construed as supervision of actual construction nor make the Engineer or authorized representative responsible for providing a safe place or safe conditions for the performance of work under the Contract by the Contractor, or Contractor's employees or those of Suppliers or Subcontractors, or for access, visits, use, work, travel, or occupancy by any person and the Contractor agrees to fully indemnify, protect, defend, save and hold harmless the City, the Engineer, and their agents and employees from all claims for damages for personal injury (including accidental death) and property damage which may arise from any operations under this contract, including claims by employees of the Contractor or of any Subcontractor or Supplier.

The payment of any compensation, irrespective of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly,



by the Contractor to any authorized representative of the City or Engineer is strictly prohibited, and any such act on the part of the Contractor will constitute a breach of the Contract.

Any advice or consultation offered to the Contractor by a representative of the City or Engineer shall not be construed as binding on the City or Engineer or as releasing the Contractor from fulfilling all the terms and conditions of these Contract Documents.

All materials and products shall be inspected before their use in the work, and the Contractor shall notify the Engineer in time to enable him to inspect any work or materials before being covered. The Contractor shall furnish necessary personnel and facilities for such inspection. The presence or absence of a representative of the Engineer shall not lessen or otherwise affect the responsibility of the Contractor to properly perform the work.

**5.9 Additional Instructions and Detail Drawings.** The Contractor may be furnished additional instructions and detail drawings by the Engineer as necessary to carry out the work required by these Contract Documents. The additional instructions and detail drawings furnished shall become a part of these Contract Documents. The Contractor shall perform the work in accordance with the additional instructions and detail drawings.

**5.10 Review of Engineering Data.** Engineering Data covering all equipment and fabricated products to be furnished under these Contract Documents shall be submitted to the Engineer for review. These data shall include drawings and descriptive information in sufficient detail to show the kind, size, arrangement, and operation of component materials and devices; the external connections, anchorages, and supports required; performance characteristics; and dimensions needed for installation and correlation with other materials and equipment. Data submitted shall include drawings showing essential details of any changes proposed by the Contractor and all required wiring and piping layouts.

At the time of each submission, the Contractor shall in writing call the Engineer's attention to any deviations that the Engineering Data may have from the requirements of these Contract Documents.

The Engineer will review the engineering data submitted in a timely and expeditious manner, provided the data is submitted in accordance with these Contract Documents, is complete, and is suitable for his review.

Seven (7) copies of each drawing and necessary data shall be submitted to the Engineer. Each drawing or data sheet shall be clearly marked with the name of the project, the Contractor's name, and references to applicable specification paragraphs and drawing sheets. When catalog pages are submitted, the applicable items shall be identified. Each drawing or data sheet shall bear the Contractor's stamp of approval which shall be construed as certification that he has reviewed, checked, and approved the Engineering Data and that the data are in conformance with the requirements of these Contract Documents and that he has determined and verified all quantities, dimensions, field construction

criteria, materials, catalog numbers, and similar data required for preparation, accuracy, and sufficiency of the Engineering Data.

When the drawings and data are returned marked "NOT APPROVED," the corrections shall be made as noted thereon and as instructed by the Engineer and seven (7) corrected copies resubmitted.

Unless otherwise directed by the Engineer, when drawings and data are returned marked "APPROVED AS NOTED," the changes shall be made as noted thereon and not less than seven (7) corrected copies shall be furnished. All corrections and changes made on the drawings or data sheets other than those noted by the Engineer shall be clearly identified with a revision symbol and shall be suitably documented on the drawing with a brief description and date.

When drawings are submitted after final review (after being returned marked "APPROVED" or "APPROVED AS NOTED"), one (1) of the copies shall be a reverse reading translucent matte finish mylar reproducible (ozalid process). The Engineer's review of drawings and data submitted by the Contractor will cover only general conformity to the drawings and specifications, external connections, and dimensions which affect the layout. The Engineer's review of drawings returned marked "APPROVED" or "APPROVED AS NOTED" does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or item shown and shall not in any way be deemed to relieve the Contractor from any responsibility for errors or deviations from the requirements of these Contract Documents or from full responsibility for complete and accurate performance of the work in conformance with these Contract Documents, or from any liability placed upon him by any provisions of these Contract Documents.

All drawings and data, after final processing by the Engineer, shall become a part of these Contract Documents, and the work shown or described thereby shall be performed in conformity therewith unless otherwise authorized by the City.

The schedule of submittals of engineering data and submittals of samples of materials or products, if required, shall be made by the Contractor in accordance with the requirements in the section entitled "Submittals" of the Detailed Specifications.

**5.11 Oral Statements.** It is understood and agreed that the written terms and provisions of these Contract Documents shall supersede all oral statements of representatives of the City, and oral statements shall not be effective or be construed as being a part of these Contract Documents.

**5.12 Notice and Service Thereof.** Any notice to the Contractor from the City or the Engineer relating to any part of these Contract Documents shall be in writing, and shall be considered delivered and the service thereof completed when said notice is mailed to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the work.

**5.13 Rejected Work, Materials, or Products.** The Contractor, upon written notice from the Engineer, shall remove all work, including materials and products,

rejected as defective, unsound, improper, or, in any way, failing to conform to the requirements of these Contract Documents. All removal and replacement work shall be done at the Contractor's expense. The Contractor shall at his sole expense make good all work damaged by such removal and shall promptly replace materials damaged or improperly worked by him and re-execute his own work in accordance with these Contract Documents. This includes re-executing or replacing the work of any other contractor or the City that is in any way affected by the removal of the defective work. The obligations of the Contractor under this section shall not extend to defective materials or equipment supplied by the City.

Should the Contractor fail or refuse to begin to remove and renew any defective work, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of these Contract Documents within ten (10) days of the written notice, the City may cause the unacceptable or defective work to be removed and replaced, or such repairs as may be necessary, to be made at the Contractor's expense. Any expense incurred by the City in making these replacements or repairs, which the Contractor has failed or refused to make, shall be paid for out of any monies due the Contractor or which may become due under the provisions of these Contract Documents, or may be charged against the Contract Performance Bond. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs promptly, fully, and in an acceptable manner shall be sufficient cause for the City to declare the Contract forfeited, in which case the City, at its option, may contract with any other person, firm, or corporation to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any monies due, or which may become due him, or shall be charged against the Contract Performance Bond. Any special work performed, as described herein, shall not relieve the Contractor in any way from his responsibility for the work performed by him.

**5.14 Substantial Completion of the Work.** Upon receipt of written notice from the Contractor that the work, or acceptable portion thereof, is substantially complete in conformance with these Contract Documents and submission of a list of items to be completed or corrected, the Engineer, in company with the City, will promptly make an inspection for substantial completion of the work, including any tests of operation, performance tests, material tests, and such other tests as specified or as the Engineer deems necessary, desirable, or proper. After completion of the inspection and tests and preparation of a detailed list of items to be completed or corrected, as determined by the inspection, the Engineer, if all things are satisfactory to him, and if, in his professional judgment and opinion the Contractor's statement appears correct, will inform the City in writing that he has examined the work, that it is substantially complete in conformance with these Contract Documents, and that he recommends the work be accepted as substantially complete. The written recommendation of acceptance of the work as substantially complete from the Engineer shall be accompanied by the list of items to be completed or corrected. It is understood and agreed that such notice from the Engineer does not in any way relieve the Contractor from any duties, responsibilities, and obligations of these Contract Documents. Should the Engineer consider that the work is not substantially complete, he will immediately notify the Contractor, in writing, stating the reasons for his determination. The

Contractor shall complete the work and send another written notice to the Engineer certifying that the work or designated portion thereof is substantially complete. The Engineer, in company with the City, will reinspect the work.

If the Engineer's recommendation is acceptable to the City, the City will notify the Contractor in writing that the work is accepted as substantially complete and will establish the date of substantial completion after which time charges shall cease, and the City will begin use of the work. It is understood and agreed that said notice from the City shall not in any way be construed to relieve the Contractor from any duties, responsibilities, or obligations of the Contract Documents or from his responsibility to deliver a complete work in accordance with the intent of these Contract Documents.

**5.15 Final Inspection.** Upon receipt of written notice from the Contractor that all items listed for completion or correction during the inspection for substantial completion have been performed and that the work has been completed in conformity with the Contract Documents, the Engineer shall promptly examine the work, in company with the City, making additional tests and investigations as he may deem proper and using due care and judgment normally exercised in the examination of the completed work by a properly qualified and experienced professional engineer and shall satisfy himself that the Contractor's statement appears to be correct. The Engineer shall then inform the City and, when applicable, regulatory agencies that the work is, in his opinion, complete in apparent conformity with these Contract Documents and shall schedule the final inspection.

Should the Engineer consider that the work is not finally complete, he will notify the Contractor in writing, stating reasons for his determination. The Contractor shall take immediate steps to remedy the stated deficiencies and/or conditions and, after correction of the deficiencies and/or conditions, send another written notice to the Engineer certifying that the work is complete. The Engineer, in company with the City, will re-inspect the work.

After the final inspection and after the submission by the Contractor of acceptable Project Record Documents, operation and maintenance data and other items required by these Contract Documents, the Engineer shall notify the City in writing that he has examined the work and that, in his opinion, it appears to conform to these Contract Documents and therefore recommends acceptance of the work and final payment to the Contractor. It is understood and agreed that such statement by the Engineer does not in any way relieve the Contractor or his Sureties from any duties, responsibilities, and obligations under these Contract Documents.

**5.16 Final Acceptance of the Work.** After the Engineer recommends acceptance of the work covered by these Contract Documents and final payment to the Contractor, the City will, if it concurs in the Engineer's recommendation, promptly notify the Contractor in writing that the work is accepted. If the City does not concur in the Engineer's recommendation, the City will promptly notify the Contractor in writing that it does not accept the work as complete and stating the deficiencies and/or conditions that shall be corrected or resolved before final acceptance will be made. After the deficiencies and/or conditions are corrected

or resolved and the City is satisfied that the work is complete, the City will notify the Contractor in writing that the work is considered complete and final acceptance is made. The guarantee period(s), as specified in these Contract Documents, shall begin on the date the Contractor is notified by the City that final acceptance of the work is made. Final acceptance of the work by the City will not be made until the Project Record Documents, operation and maintenance data and other required items are acceptable to the City.

It is understood and agreed that said notice of final acceptance or final payment by the City shall not in any way be construed to relieve the Contractor, or his Sureties from any duties, responsibilities or obligations under or in connection with these Contract Documents.

**5.17 Discrepancies.** The Contractor shall check all dimensions, elevations, and quantities shown on the drawings and schedules. The Contractor shall verbally notify the Engineer immediately confirming the notice in writing soon thereafter of any discrepancy between the drawings and the conditions on the ground or any discrepancies, errors, or ambiguities in, or omissions from, the Drawings, Specifications, or other Contract Documents which he may discover at any time during the performance of the work. The Contractor shall also notify the Engineer of any discrepancies, errors, or ambiguities in the layout as given by stakes, points or instructions which he may discover during the course of the work. The Engineer will promptly investigate the matters and will furnish full instructions in writing correcting such discrepancies, errors, ambiguities, or omissions and the Contractor shall carry out such instructions as if originally specified. If, knowing of such discrepancy, error, ambiguity, or omission and prior to reviewing written instructions from the Engineer regarding correction thereof, the Contractor proceeds with the work, any of the work so done shall not be considered as work done under these Contract Documents and in performance thereof unless and until duly approved and accepted by the Engineer. The Contractor shall not take any advantage of any discrepancy, error, ambiguity, or omission in the Drawings, Specifications, or other Contract Documents.

**5.18 Equivalent Materials and Equipment.** Whenever a material, product, article, or piece of equipment is specified or described in these Contract Documents by using the name of a proprietary product or the name of a particular manufacturer or vendor and catalog number, it is understood and agreed that the specific item is named for the purpose of establishing the type, function, dimension, appearance, quality, durability, performance, or other salient requirements and that other materials, products, articles, or pieces of equipment of equal capacities, quality and function will be considered. The Contractor may request the substitution of material, product, article, or piece of equipment of equal substance and function for those designated in these Contract Documents. The Contractor shall request substitution in writing to the Engineer stating in detail how the substituted product differs in composition and performance from the designated product and furnishing suitable complete data on which the Engineer may make the determination on the merits of the proposed substitution. If, in the opinion of the Engineer, such material, article, or piece of equipment is of equal substance and function to that designated, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible

from the Contract Price, and the Contract Documents shall be appropriately modified by a change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute shall be made by the Contractor without a change in the Contract Price or Contract Time. Requests relative to substitutions for materials, products, articles or pieces of equipment specifically designated on the Drawings or in the Specifications will not be considered until after the award of the Contract.

It is understood and agreed that (1) the Engineer is to use his own judgment whether or not any material, product, article, or piece of equipment proposed to be substituted is equal to that specified; (2) the decision of the Engineer on all such questions of equality shall be final and binding upon the Contractor; and (3) in the event of any decision of the Engineer that is considered adverse by the Contractor, no claim of any sort by the Contractor shall be made or allowed against the City or the Engineer.

**5.19 Materials.** The materials, fixtures, and apparatus furnished shall be new, except as otherwise provided herein, unused and of good quality, and shall be incorporated into the work in an undamaged condition. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Whenever materials are sold by the manufacturer in sealed packages, they shall be so delivered to the site of the work. The materials shall be manufactured, handled, and used in a workmanlike manner to provide a completed work in accordance with these Contract Documents.

Materials, products, and equipment designated for permanent installation in the work shall be properly stored by the Contractor in a manner to ensure protection against deterioration of any type. These items shall be so placed as to cause a minimum of interference with the prosecution of the work and to the public. The method of storing shall be so as to facilitate inspection. Deterioration of any kind or to any degree shall be cause for rejection. Stored materials, even though meeting the requirements of these Contract Documents before being stored, shall be inspected prior to incorporation in the work and shall meet the requirements of these Contract Documents at the time of incorporation in the work. If material, products, or equipment stored by the Contractor and paid for under the terms of these Contract Documents is damaged, or otherwise becomes unsuitable, before its permanent incorporation into the work, the amounts paid the Contractor for the damaged material shall be deducted from the next progress payment.

**5.20 Contractor's Responsibility for Materials.** The Contractor shall be responsible for the condition of all materials, products, and equipment which he has furnished, and shall replace at his own expense all such material found to be defective or which has been damaged after delivery. This includes the replacement of material which is found to be defective at any time prior to expiration of the guarantee period.

**5.21 Testing of Materials and Equipment.** The testing of materials shall be made by a competent laboratory or other person selected and paid for by the City. The Contractor shall submit samples of materials for testing as required by the

Engineer. The cost of all retests made necessary by the failure of materials to conform to the requirements of these Contract Documents shall be paid by the Contractor.

The testing of equipment and products shall be performed as provided in the Specifications.

- 5.22 Access to the Work.** The Engineer and his authorized representatives shall at all times have access to the work. Authorized representatives of the regulatory agencies shall have access to the work and to the materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Contractor shall provide proper facilities for such access and observation of the work and records and also for any inspection or testing of the work.
- 5.23 Uncovering Completed Work.** If any work is covered contrary to the written instructions of the Engineer it must, if requested by the Engineer, be uncovered for his observation and replaced at the Contractor's expense.

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

- 5.24 Minimum Requirement for Materials and Workmanship.** Unless otherwise definitely specified, it is a general requirement of these Contract Documents that all materials, products, and workmanship shall meet the requirements of the applicable standard specifications of the American Society for Testing and Materials, or of the Federal Specifications Board as minimum requirements.
- 5.25 Equipment Operation Experience Clauses.** In cases where experience clauses are used for manufacturers or suppliers, in lieu of experience, a bond or cash deposit may be accepted from manufacturers or suppliers which do not meet the specified experience period. The bond or cash deposit provided by the manufacturers shall guarantee replacement of the equipment or process in the event of failure or unsatisfactory service. The period of time for which the bond or cash deposit is required shall be the same as the experience period of time specified.
- 5.26 Surveys.** The City will furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work. From the information provided by the City, unless otherwise specified in these Contract Documents, the Contractor shall develop and make all detailed surveys needed for construction such as

slope stakes, batter boards, stakes for pile locations, and all other working points, lines, elevations, and cut sheets.

## **6. LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

**6.1 Cooperation with Public Utilities.** The Contractor shall notify the owners of adjacent utilities when the prosecution of the work may affect the utility facilities or operation. The Contractor shall perform and carry on the work so as not to interfere with or damage utility facilities in the vicinity of the work. The Contractor shall take every possible precaution to properly protect and preserve, including temporary supports and bracing where necessary, the utility facilities from damage, injury or displacement. The Contractor shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the contractor, any Subcontractor or any person directly or indirectly employed or engaged by the Contractor or a Subcontractor or any person for whose acts the Contractor or a Subcontractor is liable.

The City and the Engineer will not be responsible for any delay in performing the work resulting from the existence, removal or adjustment of any utility facilities. Additional costs incurred by the Contractor as a result thereof shall be borne solely by the Contractor.

Utility facilities, such as water mains, gas mains, storm sewers, sanitary sewers, telephone lines, power lines and buried facilities and structures in the vicinity of the work are indicated on the drawings only to the extent such information has been made available to or discovered by the Engineer during the course of preparing the drawings. The actual locations of the utility facilities may vary from the locations shown, and there may be utility facilities existing that are not indicated on the drawings. It is understood and agreed that there is no guarantee as to the accuracy or completeness of the utility information indicated on the drawings, and all responsibility for the accuracy or completeness thereof is expressly disclaimed. Generally, service connections are not indicated on the drawings.

The Contractor shall be solely responsible for locating all existing underground facilities, including service connections, in advance of excavating, trenching or other work, by contacting the owners of the facilities or prospecting. The Contractor shall use his own information and shall not rely upon the information shown on the drawings concerning utility facilities.

In the event of accidental damage to or disruption of utilities by the Contractor or any of his Subcontractors or agents, the Contractor shall immediately take all necessary steps to replace any pieces of damaged equipment and all damaged materials, make all necessary repairs and restore all services to normal. The Contractor shall engage any and all required additional labor, individuals, subcontractors or other outside services which may be deemed necessary, to operate on a continuous "around-the-clock" basis until services are restored. He shall also provide and install all required equipment and materials to maintain temporary emergency services for uninterrupted use of facilities. All costs involved in making the repairs and restoring the disrupted service to normal shall be borne by the Contractor responsible for such disruption of services, and he



shall be fully responsible for any and all damage claims resulting from such disruption.

Under no circumstances shall the Contractor or any of his subcontractors or agents disrupt or disconnect any type of facility whatsoever without first obtaining the written permission of the utility owner to do so. Request for disruption or disconnection shall state:

- A. The location of the required disconnect and which utility is concerned.
- B. The exact date and time at which the disconnect will be required.
- C. The duration of the proposed disconnect or interruption.

Where it is necessary to temporarily interrupt services, the Contractor shall notify the utility owner, both before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the Contractor shall obtain permission from the owners thereof, or shall make suitable arrangements for their disconnection by the owners. Where it is necessary to temporarily interrupt house services, the Contractor shall notify the house owner or occupant, both before the interruption and again immediately before service is resumed. Should underground utilities or structures be encountered that are in minor conflict with the alignment or gradient of the proposed work, the proposed work may be adjusted by the Engineer where such adjustment is feasible and will not interfere with the operation of the proposed system. No payment will be made for these adjustments.

Where major conflicts in the proposed work and existing utilities or structures occur and adjustment of the new work is not feasible, then the Engineer may revise the alignment and/or grade to suit these conditions. If, in the opinion of the City, these revisions are necessary and are outside the scope of the bid items, they will be paid for as extra work.

**6.2 Railway Crossings.** When the work encroaches upon the right-of-way of any railway, the City will secure for the Contractor all the necessary easements or authority to enter upon such right-of-way for the prosecution and completion of the work. Where railway tracks are to be crossed, the railway company will construct the necessary bridges, trestles, cribs or other structures for safe operations of the trains or cars across any excavation during the time of construction of the work. Where such crossings require a change of grade, such change shall be made by or at the expense of the railway company. Contractor shall, however, take such special precaution for the safety of the work and the traveling public as may be necessary, by sheeting, bracing, and thoroughly supporting the sides of any excavation and supporting and protecting any adjacent structures.

**6.3 Protection of Public and Private Property.** The Contractor shall protect from damage all property in the vicinity of the work or that is in any way affected by the work, the removal or destruction of which is not called for by the Contract Documents. This applies to public and private property, utility facilities, trees, grass, shrubs, crops, signs, monuments, fences, pipe, underground structures,

public roadways, sidewalks, curb and gutters, driveways and any other natural or man-made terrain features. Whenever such property is damaged due to the Contractor's performance of the work, the Contractor shall immediately restore it to condition equal to or better than that existing before such damage or injury was done by the Contractor. The Contractor shall make good all such damage or injury in an acceptable manner at his own expense. In case of failure of the Contractor to restore such property, or to make good such damage or injury, the City may, upon forty-eight (48) hours' notice, under ordinary circumstances and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Contractor under the terms of these Contract Documents.

Reasonable care shall be taken during construction to avoid damage to vegetation. Ornamental shrubbery and tree branches shall be tied back, where appropriate, to minimize damage. Trees which receive damage to branches shall be trimmed of those branches to improve the appearance of the tree. Tree trunks receiving damage from equipment shall be treated with a tree dressing.

The Contractor shall not enter upon private property for any purpose without first obtaining permission, and he shall be responsible for the preservation of all public and private property. The Contractor shall at all times while the work is in progress use extraordinary care to see that adjacent buildings are not endangered in any way by reason of fire, water, or construction operations, and to this end shall take such steps as may be necessary or directed to protect the property therefrom, and the same care shall be exercised by all Contractor's and Subcontractor's employees. The Contractor shall give due notice to any controlling person, department, or public service company, prior to adjusting items to grade and shall be held strictly liable to the City if any such items are disturbed, damaged or covered up during the course of the work. The Contractor shall not disturb, remove or relocate any land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location.

Any temporary drains and drainage which may be required by the Contractor during the construction period shall be furnished, installed and maintained by him. No such drains or drainage systems shall be installed or used without the prior approval of the Engineer. At the completion of the work, all such drains and drainage systems shall be removed and the premises returned to a neat and clean condition.

Fire hydrants on or adjacent to the work shall be kept accessible to the fire-fighting apparatus at all times, and no material or obstruction shall be placed within 10 feet of any hydrant. Adjacent premises must be given access, as far as practicable, and obstruction of sewer inlets, gutters and ditches will not be permitted.

- 6.4 Safety and Protection of Work.** 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 employees on the work, and shall comply with all applicable provisions of Federal, State and Local safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor shall comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) as amended and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54) as amended. Copies of these regulations may be obtained from the U.S. Government Printing Office, 275 Peachtree Street, N.E., Atlanta, Georgia 30303.

The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards, including sufficient lights and danger signals on or near the work; he shall erect suitable railings, barricades, covers, or other protective devices about unfinished work, open trenches, holes, embankments or other hazards and obstructions; where hazards to workmen or the public exist. The Contractor shall provide, at all times, all necessary watchmen on the project, for the safety of employees, delivery personnel, and the general public, and to diligently guard and protect all work and materials, including Owner-furnished equipment. Construction equipment shall be suitably night-marked and lighted as necessary for safety considerations. No separate payment will be made for providing lights on vehicles and equipment, signs, barricades, lights, flags, watchmen and other protective devices, and the costs thereof shall be included in the Contract Price(s).

The Contractor shall comply with all applicable provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, and shall maintain an accurate record of all cases of death and all cases of occupational disease and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on the work under these Contract Documents.

The Contractor shall solely be responsible for the safety, efficiency and adequacy of his plant, appliances and methods and for any damage which may result from their failure or their improper construction, maintenance or operation.

**6.5 Public Safety and Convenience.** The Contractor shall conduct his operations in a manner that will offer the least possible obstruction and inconvenience to the public and he shall not have under construction an amount of work greater than he can prosecute properly with due regard to the rights of the public.

Construction operations shall be conducted in a manner that will cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses, buildings or other facilities in the vicinity of the work shall be maintained and temporary access facilities for public roadways shall be provided and maintained in satisfactory condition.

**6.6 Maintenance of Existing Traffic.** Satisfactory facilities shall be provided by the Contractor for maintaining public access and travel, and every effort shall be made to reduce any necessary inconveniences to a minimum.

- 6.7 Emergencies Affecting Property or Safety.** 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 City, shall act to prevent threatened damage, injury or loss. He will give the Engineer prompt written notice of any significant changes in the work or deviations from these Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the change and deviations involved.
- 6.8 Indemnification.** It is understood and agreed that the Contractor shall be deemed and considered an independent contractor in respect to the work covered by these Contract Documents, and shall assume all risks and responsibility for casualties of every description in connection with the work, except that he shall not be held liable or responsible for delays or damage to work caused by acts of God, acts of public enemy, quarantine restrictions, general strikes throughout the trade, or freight embargoes not caused or participated in by the Contractor. The Contractor shall have charge and control of the entire work until completion and final acceptance of the work by the City. The Contractor shall be alone liable and responsible for, and shall pay, any and all loss and damages sustained by any person either during the performance or subsequent to the completion of the work these Contract Documents, by reason of injuries to person and damage to property, buildings and adjacent work, that occur either during the performance or subsequent to the completion of the work covered by these Contract Documents, or that may be sustained as a result or consequence thereof, irrespective of whether or not such injuries or damage be due to negligence or to the inherent nature of the work. The Contractor shall fully indemnify, protect, defend, save and hold harmless the City, the Engineer, and their agents and employees from any and all liability and from all suits and actions of every kind and description brought or which may be brought against them or any of them relative to the performance of the work or other responsibilities of the Contractor under these Contract Documents.
- 6.9 Claims for Labor and Materials.** The Contractor shall indemnify and save harmless forever the City from all claims for labor, materials and services furnished under these Contract Documents. When requested by the City, the Contractor shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under these Contract Documents, for which the City may become legally liable, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained from money due the Contractor which in addition to any other sums that may be retained will be sufficient, in the opinion of the City, to liquidate all such claims. Such sum will be retained until the claims as aforesaid are fully settled or satisfactorily secured.

Before final acceptance of the work by the City, the Contractor shall submit to the Engineer in duplicate a notarized affidavit stating that all subcontractors, vendors, persons, or firms who have furnished labor materials, or services for the work have been fully paid and that all taxes have been paid. A statement from the Surety shall also be submitted consenting to the making of the final payment.

**6.10 Defense of Suits.** In case any action in court is brought against the City or the Engineer, or any officer, agent or employee of any of them, for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material-men, or suppliers, the Contractor shall indemnify, defend and save harmless the City and the Engineer and their officers, agents and employees, from all losses, damages, costs, expenses (including attorneys' fees), judgments, or decrees arising out of such action.

**6.11 Familiarity with Laws.** It is understood and agreed that the Contractor shall be familiar with and shall observe and comply with, all Federal, State, County, and City laws, codes, ordinances, regulations, orders, and decrees, including air and water pollution and noise abatement regulations, existing, or enacted subsequent to the execution of the Contract, that in any manner affect those engaged or employed in the work, or the materials or equipment used in the work, or which in any way affect the conduct of the work. The Contractor shall strictly observe all applicable laws and regulations as to public safety, health and sanitation. No pleas of misunderstanding or ignorance on the part of the Contractor will in any way serve to modify or mitigate the provisions of these Contract Documents. The Contractor and his Surety shall indemnify and save harmless the City and the Engineer and all their officers, agents, and servants against any claim or liability arising from, or based on the violation of, any such law, code, ordinance, regulation, order or decree, whether by himself, his agents or his employees.

The Contractor shall give all notices relating to all laws, codes, ordinances, regulations, orders and decrees bearing on the conduct of the work. If the Contractor observes that the Contract Documents are at variance therewith, he shall promptly notify the Engineer, in writing, and any necessary changes shall be adjusted as provided in these Contract Documents for changes in the work. If the Contractor performs any work contrary to such laws, codes, ordinances, regulations, orders, and decrees, and without such notice to the Engineer, he shall bear all costs arising therefrom.

**6.12 Taxes, Permits and Certification.** The Contractor shall pay all applicable taxes levied by Federal, State, and Local Governments and obtain all permits on any part of the work as required by law in connection with the work. It is understood and agreed that the cost of said taxes is included in the Contract Price(s) for the work.

The Contractor shall procure all temporary and permanent permits and licenses, necessary and incidental to the due and lawful prosecution of the work, and shall pay all charges and fees, and all costs thereof shall be deemed to be included in the Contract Price(s) for the work.

**6.13 Patents and Royalties.** Royalties and fees for patents covering materials, articles, apparatus, devices, or equipment (as distinguished from processes) used in the work, shall be included in the Contract Price(s). The Contractor shall satisfy all demand that may be made at any time for such royalties or fees and he shall be liable for any damages or claims for patent infringements. The

Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the City for alleged infringement of any patents involved in the work and, in case of an award of damages, the Contractor shall pay such award. The Contractor, however, will not be held liable for the defense of any suit or other proceeding nor for the payment of any damages or other costs for the infringement of any patented process required by these Contract Documents; except if the Contractor has information that the process so required is an infringement of a patent, the Contractor shall be liable for any damages or claims in connection therewith unless he promptly notifies the City and Engineer of such infringement.

**6.14 Requirements for Insurance Coverage.** The Contractor shall not commence work under these Contract Documents until he has obtained all insurance required herein, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until similar insurance required of the Subcontractor has been obtained by the Subcontractor. Insurance shall be placed by the Contractor with one or more insurance carriers licensed to do business in the State of Tennessee. Each insurance policy shall be renewed ten (10) days before the expiration date of the policy.

Certificates of insurance shall be filed with the City prior to commencement of the Work. These certificates shall contain a provision that coverage afforded under the policies will not be changed or canceled unless at least fifteen (15) days' written notice has been given to the City. The Contract shall not be binding upon the City until the insurance coverage required herein has been obtained and certificates have been filed with the City.

Adequate insurance coverage shall be maintained by the Contractor at all times. Failure to maintain adequate coverage shall not relieve the Contractor of any responsibilities or obligations under these Contract Documents. In the event any insurance coverage is canceled or allowed to lapse, the Contractor will not be permitted to prosecute the work until adequate and satisfactory insurance has been obtained and Certificates of Insurance furnished to the City. Failure to keep insurance policies in effect will not be cause for any claims for extension of time under these Contract Documents.

All such policies shall be subject to approval by the City Attorney. Should the City Attorney at any time in his sole discretion determine that the insurance policies and certificate provided may not be sufficient to protect the interests of the City because of the insolvency of the insurance company or otherwise, the Contractor shall replace such policies with policies meeting his approval.

The Contractor shall procure and maintain at his own expense, during the Contract Time, insurance as hereinafter specified:

- A. Workmen's Compensation Insurance that shall protect the Contractor against all claims under applicable state workmen's compensation laws shall be maintained. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workman's compensation law. This policy shall also include an endorsement providing coverage in all states in which work is performed.

The Contractor shall require all Subcontractors to provide similar Workmen's Compensation Insurance for all the Subcontractors' employees on the work unless such employees are covered by the protection afforded by the Contractor. The liability limits shall not be less than that required by statute.

- B. General Public Liability and Property Damage Insurance that shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries including death, to members of the public or damage to property of others arising out of any act or omission of the Contractor or his agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the successful bidder to defend and indemnify the City and Engineer against such claims or suits.

To the extent that the work may require blasting, explosive conditions, or underground operation, the comprehensive general public liability and property damage coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

The comprehensive general public liability and property damage coverage shall also protect the Contractor against all claims resulting from damage to:

1. Private driveways, walks, shrubbery and plantings
2. Public utility facilities
3. U.S. Government monuments

The liability limits shall not be less than:

Bodily Injury	\$ 500,000 each person \$1,000,000 each occurrence
Property Damage	\$ 250,000 each occurrence \$ 500,000 aggregate

The general public liability and property damage insurance shall carry an endorsement in form satisfactory to the City to the effect that the Contractor shall save harmless the City from any claims and damage whatsoever, including patent infringement. General public liability and property damage insurance shall be kept in force at all times during the course of the work until such time as the work covered by these Contract Documents has been completed and accepted by the City.

- C. Comprehensive Motor Vehicle Liability and Property Damage Insurance that shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall not be less than:

Bodily Injury	\$ 250,000 each person \$ 500,000 each occurrence
Property Damage	\$ 100,000 each occurrence

- D. Builder's Risk Insurance that shall be written in completed value form and shall protect the Contractor, the City, and the Engineer against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall be not less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment such as pumps, engine-generators, compressors, basin equipment, motors switch-gear, transformers, panel boards, control equipment and other similar equipment shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers the work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the City as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

- E. Installation Floater Insurance that shall protect the Contractor, the City, and the Engineer from all insurable risks of physical loss or damage to materials, products and equipment not otherwise covered under builder's risk insurance, while in warehouses or storage areas, during installation, during testing, and after the work is completed. It shall be of the "all risks" type, with coverages designed for the circumstances which may occur in the particular work under these Contract Documents. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials, products and equipment insured under builder's risk insurance. The value shall include the aggregate value of the City-furnished equipment, products and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

Installation floater insurance shall provide for losses, to be payable to the Contractor and the City as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

If the aggregate value of the City-furnished and Contractor-furnished equipment is less than \$10,000, such equipment may be covered under builder's risk insurance, and if so covered, this installation floater insurance may be omitted.



Certificates of insurance covering installation floater insurance shall quote the insuring agreement and all exclusions as they appear in the policy; or in lieu of certificates, copies of the complete policy may be submitted.

- 6.15 Sanitary Conditions.** The Contractor shall provide and maintain adequate and satisfactory sanitary facilities. All sanitary facilities shall conform to the requirements of the Tennessee Department of Public Health and the Chattanooga-Hamilton County Health Department.
- 6.16 Contract Provisions Required by Law.** It is understood and agreed that each and every provision and clause required by Local, State and Federal laws and regulations to be inserted in these Contract Documents shall be deemed to be inserted herein in their entirety and the Contract Documents shall be read and enforced as though they were included herein. If through mistake or otherwise, any such provision or clause is not inserted, or is not correctly inserted, these Contract Documents shall forthwith be physically amended to make such insertion or correction upon the application of either party of the Contract.
- 6.17 Preservation of Monuments and Stakes.** The Contractor shall carefully preserve all monuments, bench marks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or bench marks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or bench marks.

## **7. PROSECUTION AND PROGRESS**

- 7.1 Subcontracts.** The Contractor shall give his personal attention to the fulfillment of the Contract and shall at all times keep the work under his control.

The Contractor may subcontract portions of the work; however, he shall not award any work to any Subcontractor without prior written approval of the City. The City's approval will not be given until the Contractor submits to the City a satisfactory statement concerning the proposed award to a Subcontractor. The Contractor shall perform with his own organization and employees not less than fifty (50%) percent of the labor costs of the project. The Contractor and each Subcontractor shall provide information to the City concerning labor costs and other employee information on forms provided by the City within one week following each payroll. These forms shall include information concerning total labor costs, job classifications, and the race and sex of each person directly employed on the project.

The Contractor shall be as fully responsible to the City for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for acts or omissions of persons directly employed by him. Nothing contained in these Contract Documents shall create any contractual relation between any Subcontractor and the City. All Subcontractors shall be deemed to be agents of the Contractor.

The approval of the City of any Subcontractor shall not, under any circumstances, operate to relieve the Contractor or his sureties of any of his or their obligations under these Contract Documents. It is understood and agreed that all subcontracts and approvals of Subcontractors shall be based upon the requisite of performance by the Subcontractor in accordance with these Contract Documents; and should any Subcontractor fail to perform his work to the satisfaction of the Engineer, the City shall have the absolute right to rescind his approval at once and to require the performance of such work by the Contractor entirely or in part through other approved subcontractors.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bid subcontractors to the Contractor by the terms of these Contract Documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provisions of these Contract Documents.

The Contractor shall inspect all work performed by Subcontractors for compliance with these Contract Documents.

- 7.2 Assignment.** The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the City.

The Contractor shall not assign any monies due or to become due to him under this Contract without the prior written consent of the City. In the event that the Contractor undertakes to assign all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a provision substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in these Contract Documents.

- 7.3 Beginning of Work.** The Contractor shall begin the work within ten (10) days after receiving the Notice to Proceed and shall diligently prosecute the work to completion within the contract time. The Contractor shall notify the City and the Engineer two working (2) days in advance of the date he will begin operations.

- 7.4 Distribution of the Work.** The Specifications and other Contract Documents may be arranged in Sections under general titles descriptive of the principal materials or trade practices as far as seems practical without unreasonable complicated or minute breakdown. Under many divisions it has seemed proper to include items of other trades or types of materials, the use or the installation of which is closely related to the principal subject of that division. Such arrangement shall not operate to make the Engineer or the City an arbitrator to establish subcontract limits between Contractor and Subcontractor.

The Contractor and all Subcontractors shall study the Drawings, Specifications and other Contract Documents in sufficient detail to assure that all required items are included. It shall be the Contractor's responsibility to so arrange and

distribute the work that all required items are provided by the proper trades and at the proper times, without controversy as to contract obligations, or as to jurisdiction, and he shall make all necessary adjustments to this end.

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

The Contractor shall be responsible for complete supervision and control of his Subcontractors as though they were his own forces. Notice to the Contractor shall be considered notice to all affected subcontractors.

- 7.6 Labor.** The Contractor shall employ only workmen who are competent to perform the work assigned to them and, in the case of skilled labor, who are adequately trained and experienced in their respective trades and who do satisfactory work.

If any person employed by the Contractor on the work appears to the Engineer to be incompetent or to act in a disorderly or improper manner, the person shall be discharged immediately on the request of the Engineer, and such person shall not again be employed on the work.

All labor described in these Contract Documents or indicated on the Drawings and the work specified shall be executed in a thoroughly substantial and workmanlike manner by persons skilled in the applicable trade. All materials, fixtures and apparatus shall be installed in an undamaged condition.

The Contractor shall enforce strict discipline and good order among his employees. No intoxicating liquor or drugs will be allowed on the project.

The Contractor and all Subcontractors shall comply with all ordinances, laws and regulations applicable to the work regarding labor and mechanics.

- 7.7 Methods of Operation.** The Contractor shall inform the Engineer in advance concerning his plans for carrying on each part of the work, but the Contractor alone shall be responsible for the safety, adequacy, and efficiency of his plant, equipment, and methods.

Any method of work suggested by the City or Engineer, but not specified, shall be used at the risk and responsibility of the Contractor; and the City and Engineer will assume no responsibility therefore.

Review by the City or Engineer of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefor, and such review shall not be considered as an assumption of any risk or liability by the City

or Engineer, or any officer, agent, or employee thereof. The Contractor shall have no claim on account of the failure or inefficiency of any plan or method so reviewed.

The sequence of the work performed under these Contract Documents will be left to the Contractor unless otherwise specified herein. Should the Engineer order the Contractor to increase his forces or working hours in order to maintain the progress of the work consistent with the required progress necessary for completion of the work within the Contract time, the Contractor shall comply with such order without additional cost to the City.

- 7.8 Lands and Right-of-Way.** Prior to the issuance of the Notice to Proceed, the City will have obtained most of the land and rights-of-way, including easements, necessary for carrying out and for the completion of the work to be performed pursuant to these Contract Documents, unless mutually agreed or specified in the Specifications.

The City will provide to the Contractor information which delineates and describes the lands owned and rights-of-way, including easements, acquired.

The Contractor shall provide, at his own expense and without liability to the City, any additional land and access thereto that the Contractor may acquire for temporary construction facilities, or for storage of materials.

In the event all land and rights-of-way have not been obtained as herein contemplated before construction begins, the Contractor shall begin the work upon such land and rights-of-way as the City may have previously acquired, and no claim for damages whatsoever will be allowed by reason of the delay in obtaining the remaining land and rights-of-way. Should the City be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the commencement, by reason of any litigation, or by reason of its inability to procure any lands or rights-of-way for the work, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, or to withdraw from the contract except by consent of the City; but time for completion of the work will be extended to such time as the City determines will compensate for the time lost by such delay, such determination to be set forth in writing.

- 7.9 No Waiver of Legal Rights.** Neither the inspection by the City or Engineer or any of their officials, employees, or agents, nor any order by the City or Engineer for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the City or Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of these Contract Documents, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

Any waiver of any provisions of these Contract Documents shall be specific, shall apply only to the specified item or matter concerned and shall not apply to other similar or dissimilar items or matters.

**7.10 Project Record Documents.** The Contractor shall prepare and maintain at the site of the work complete and detailed Project Record Documents of the completed work. Throughout the course of the work, the Contractor shall make all measurements and record the work as actually constructed on the Drawings and shall record on the record set of Specifications and other Contract Documents all materials or other items of construction actually used. The Project Record Documents shall represent the work as actually constructed. The Project Record Documents shall be submitted to and be acceptable to the Engineer before the final payment will be made to the Contractor.

The City will furnish the Contractor one set of reverse reading translucent matte finish mylar reproducible (ozalid process) copies of the contract drawings for the Contractor's use in preparing the record drawings.

**7.11 Changes in the Work.** The City reserves the right to make at any time, without prior notice to the Surety, such alterations in the drawings or in the character of the work as the City may consider necessary or desirable to complete the proposed work in a satisfactory manner and consistent with the intent of these Contract Documents. Notice of every such alteration or change shall be given in writing to the Contractor by the Engineer, and no such alteration or change shall be considered as constituting a waiver of any of the provisions of these Contract Documents, or as nullifying or invalidating any of such provisions. Should any such alteration or change result in an increase or decrease in the quantity or the cost of the work or materials described in these Contract Documents, the total amount payable under the Contract will be accordingly modified. If alterations or changes result in additional time being needed by the Contractor to complete the work, the Contract Time will be correspondingly modified, if the Contractor so requests, before commencing the work attributable to such alterations or changes.

**7.12 Extra Work and Changes in Contract Price.** The Contract Price may be changed only by a Change Order.

A. It is understood and agreed that the Contractor shall perform all extra work that may be ordered in writing by the Engineer acting on the specific authority of the City arising out of the modification of the specifications or drawings made or approved by the City. For this extra work, the Contractor shall be compensated as provided hereinafter and in the Change Order covering the extra work.

Extra work is defined as: (1) that additional work of a different character or function and for which no basis of payment is prescribed in these Contract Documents; or (2) that work involving revisions of the details of the work in such manner as to render inequitable payment under items upon which the Contractor bid; or (3) that additional work of a similar nature and character as that done under the unit prices named in these Contract Documents.

No claim for extra work will be considered unless said extra work was ordered in writing as aforesaid, and the claim presented in writing to the Engineer within 30 days after receipt by the Contractor of the written order to perform said extra work.

If the performance of the extra work results in additional time being required by the Contractor to complete the work covered by these Contract Documents, said Change Order will provide for an equitable extension in the Contract time.

- B. The Contractor shall be compensated for said extra work in accordance with one of the following methods and as set forth in the Change Order:
1. At the unit prices bid for items of work of a similar nature and character as set forth in the Bid Schedule on the Bid Proposal of these Contract Documents or as set forth in a previous Change Order.
  2. At new unit prices for new items of work as negotiated and mutually agreed upon by the City and the Contractor prior to proceeding with the extra work.
  3. For the lump sum price for the complete extra work as negotiated and mutually agreed upon by the City and the Contractor prior to proceeding with the extra work.
  4. At the actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the extra work plus an amount to cover the cost of general overhead and profit negotiated and agreed upon by the City and the Contractor prior to proceeding with the extra work.
- C. When compensation for extra work is provided under paragraph 7.12.2.4 above, the Contractor's representative and the Engineer shall compare records of extra work done at the end of each day. Such records shall be made in duplicate upon a form provided for such purpose by the Engineer and shall be signed by both the representatives referred to herein, one copy being submitted to the Engineer and the other being retained by the Contractor.
- D. The compensation provided herein shall be received and accepted by the Contractor as payment in full for all extra work done.

**7.13 Time for Completion.** The date of beginning and the time for completion of the work are essential conditions of these Contract Documents, and the work embraced shall be commenced within 10 days of the date of the Notice to Proceed.

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

**7.14 Extensions of Time.** Extensions of time will be granted to the Contractor upon receipt of written request for such extensions, provided that such delays were

occasioned by the City or by causes judged by the Engineer, subject to the City's concurrence, to be entirely beyond the Contractor's control or anticipation. In the even additional time is earned by the Contractor under the terms of these Contract Documents, or is granted by the City, such fact shall not be interpreted as a waiver of the full obligation on the part of the Contractor to complete the work within the extended time. Requests for extension of time made after ten (10) days following the event occasioning the delay, will not be considered by the City.

**7.14 Suspension of the Work.** The Contractor shall not suspend the work and shall not remove any equipment, tools, supplies, materials, or other items without the written permission of the City.

The City shall have the authority to suspend the work wholly or in part, for such period as may be necessary, due to unsuitable weather, such other conditions as are considered unfavorable for the suitable prosecution of the work; or due to the failure on the part of the Contractor to carry out orders given, supply sufficient skilled workmen, supply suitable material, prosecute the work satisfactorily and in a workmanlike manner, make prompt payments to Subcontractors or for labor, materials, or equipment, or to perform any obligations or requirements of these Contract Documents. The Contractor shall immediately comply with the written order of the City to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the City.

In the event that a suspension of the work is ordered by the City, the Contractor shall, at his expense, do all the work necessary to secure the work and the area affected by the work and to protect all previously completed work as specified herein or as directed by the City. The suspension of the work by the City shall not relieve the Contractor of any duties, obligations, or responsibilities set forth in these Contract Documents. In the event the Contractor fails to secure and protect the work and area as specified or as ordered, the City will perform, or cause to be performed, all work considered necessary, and the cost thereof will be deducted from monies due or to become due the Contractor under the terms of these Contract Documents.

**7.15 Liquidated Damages for Delay in Completion of the Work.** As time is of the essence in this Contract, should the Contractor fail to complete the work, or specified portion thereof, sufficient for acceptance as substantially complete by the City within the Contract Time and extensions thereof, it is understood and agreed that the Contractor shall pay the City, as acknowledged liquidated damages, an amount determined, affixed and agreed (as stipulated in the Contract hereof) per calendar day that he is delinquent. The amount of liquidated damages shall be reported by the Engineer and shall be paid by the Contractor to the City or shall be deducted and withheld by the City from the monies due or to become due the Contractor under the terms of these Contract Documents.

The number of days used in determining the amount of liquidated damages to be paid by the Contractor for delay in completing the work shall be determined by subtracting the Contract Time, and any time extensions thereof, from the time

actually required for the completion of the work. The time actually required for the completion of the work is defined as the total number of calendar days from the date 10 days after the date of the Notice to Proceed to the date of substantial Completion.

This provision for liquidated damages shall be effective between the parties ipso facto without necessity for demand or putting in default by any notice or other means than by the terms of these Contract Documents, the Contractor hereby waiving any such other notice of default and acknowledging that the Contractor shall be deemed to be in default by the mere act of his failure to complete the work within the Contract Time, or within any valid extension of such time hereunder.

It is understood and agreed that these liquidated damages are not a penalty, but constitute liquidated damages for loss to the City because of increases in expenses for administration, legal counsel, accounting, engineering, construction supervision, inspection, and any other expenses incurred directly as a result of the delay of the Contractor in completing the work.

**7.16 Liability for Failure to Satisfy Guarantees and Warranties.** Should the Contractor fail to furnish equipment, materials, and products meeting the guarantees and warranties specified herein, the Contractor shall be in default under the Contract and subject to all of the remedies of the City, including payment to the City of the additional operation and/or construction costs resulting from the system's nonperformance in the amounts specified in these Contract Documents and recourse for such payments to the Performance Bond. It is understood and agreed that these payments are not a penalty, but constitute reimbursement for loss to the City because of increased expenses of operation and/or construction of the project as a result of the failure of the Contractor to furnish equipment, materials, and products in conformance with these Contract Documents.

**7.17 Equipment and Construction Plant.** All equipment and construction plant shall be suitable to produce the quality of work and materials required for the satisfactory completion of the work within the Contract Time and shall be satisfactory to the Engineer. The Contractor shall provide adequate and suitable equipment and construction plant to meet the requirements of the work as specified in these Contract Documents. The Contractor shall remove unsuitable equipment from the work and add to the construction plant when ordered to do so by the Engineer.

The Contractor shall obtain written permission from the City prior to constructing temporary buildings or other structures on land owned or leased by the City. If a permit is granted, said buildings or other structures shall comply with all applicable regulations regarding their construction and maintenance and shall be satisfactory to the City.

**7.18 Relations with Other Contractors.** The Contractor shall cooperate with all other contractors who may be performing work in behalf of the City and workmen who may be employed by the City on any work in the vicinity of the work to be done under these Contract Documents, and he shall so conduct his operations



as to interfere to the least possible extent with the work of such contractors or workmen. The Contractor shall promptly make good, at his own expense, any injury or damages that may be sustained by other contractors, the City or employees of the City at his hands. Any difference or conflict which may arise between the Contractor and other contractors or between the Contractor and workmen of the City in regard to their work shall be adjusted as determined by the Engineer. If the work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall have no claim against the City on that account other than an extension of time.

Whenever there is interference with work under other contracts, the Engineer shall decide the manner in which the work shall proceed under each contract.

**7.19 Unfavorable Construction Conditions.** During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely thereby. No portion of the work shall be constructed under conditions which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

**7.20 Sunday, Holiday and Night Work.** No work shall be done between 6:00 p.m. and 7:00 a.m. nor on Sundays or locally observed national holidays without the written permission of the Engineer. However, emergency work may be done without prior permission. Night work will not be established as a regular procedure, excluding emergencies, except with written permission. Such permission, if granted, shall be upon such terms and conditions deemed appropriate in the Engineer's sole discretion.

**7.21 Sewage, Surface, Subsurface and Flood Flows.** The Contractor shall furnish all necessary equipment, materials and labor, at his expense, for handling, passing and disposing of all sewage, seepage, surface, subsurface and flood flows encountered at any time during the prosecution of the work. It is understood and agreed that the Contractor shall bear all risks associated with said flows; shall indemnify the City and the Engineer from any liabilities resulting from said flows; and shall not make any claim for additional compensation for delays or damage resulting from said flows. The manner of providing for these flows shall be satisfactory to the Engineer and in conformance with all applicable laws and regulations.

## **8. MEASUREMENT AND PAYMENT**

**8.1 Scope of Payment.** The Contractor shall accept compensation provided in these Contract Documents as full payment for furnishing all labor, materials, supplies, tools, equipment, taxes, fees, contingencies, and other items necessary or convenient to the completed work and for performing all work contemplated and embraced in these Contract Documents; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the City and for all risks of every description connected with the prosecution of the work; also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in

these Contract Documents; and for completing the work in accordance with these Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material or of any provisions of these Contract Documents.

No compensation will be made in any case for loss of anticipated profits.

**8.2 Basis of Payment.** The basis of payment shall be the Contract Unit Prices and/or Contract Lump Sum Price(s) named in these Contract Documents.

**8.3 Measurement of Quantities.** The measurement of quantities shall be made by the Engineer in accordance with the Specifications and other Contract Documents.

If the Contract is based on a Unit Price Bid, the items of work to be measured and the units of measurement shall be as set forth in the Bid Proposal Form. Only net quantities of finished work will be measured. Any items of work not set forth in the Bid Proposal Form, but necessary or convenient for the satisfactory completion of the work under the terms of these Contract Documents, shall not be measured separately and shall be considered a part of said items of work set forth in the Bid Proposal Form.

If the Contract is based on a Lump Sum Bid, the measurement of quantities for progress estimates and progress payments requests will be made by the Contractor, subject to the Engineer's approval, and will be based on items of work and the value thereof contained in the Contractor's Schedule of Values. A final measurement of quantities will not be required.

**8.4 Progress Payment Requests and Partial Payments.** On the first day of each month the Contractor may submit to the Engineer, on forms furnished by the Engineer, a progress payment request for the amount of work accomplished, products finished, and products stored at the site (See 01630-1.02,B) during the previous month. Ten (10) signed copies of each request shall be furnished.

The progress payment request shall be signed by the Contractor and be supported by such data as the Engineer may reasonably require. If payment is requested for products not incorporated in the work but delivered and suitably stored at or near (See 01630 1.02,B) the site, the progress payment request shall also be accompanied by such supporting data, satisfactory to the City, as will establish the City's title to said products and protect its interest therein, including appropriate insurance. The Contractor shall furnish a proper and duly executed written authorization designating those persons who will be authorized to sign and/or certify progress payment requests for the Contractor.

The Engineer will, within ten (10) days after receipt of each progress payment request, either indicate in writing his approval of the progress payment request and present it to the City, or return the progress payment request to the Contractor, indicating in writing his reasons for refusing to approve it.

The City will, within thirty (30) days after receipt of the approved progress payment request, pay the Contractor a partial payment on the basis of the

approved progress payment request, less the retainage and other deductions pursuant to the terms of these Contract Documents.

The City will retain ten (10%) percent of the total amount of partial payments for the work covered by these Contract Documents until substantial completion. After the work is accepted as substantially complete, the City, at its sole discretion and with the full knowledge and consent of the Contractor's surety, may reduce the retainage to an amount sufficient, in the Engineer/Architect's opinion, to complete the work should the Contractor default. A cash bond or an irrevocable letter of credit, provided by the Contractor and satisfactory to the City Attorney, may be accepted by the City in lieu of all or part of the cash retainage specified herein.

It is understood and agreed that the approval of the progress payment request and the paying of a partial payment shall not be construed as acceptance of any work, materials, or products and shall not relieve the Contractor in any way from his responsibilities and obligations under these Contract Documents.

A partial payment will not be made when, in the judgment of the City or the Engineer, the work is not proceeding in accordance with any of the provisions of these Contract Documents.

**8.5 Retainage Held as Security.** Notwithstanding any other provision of this Contract to the contrary, in the event the City shall have reasonable grounds to suspect that:

- A. The Contractor or associated person has breached the Affidavit of No Collusion contained in these Contract Documents or has breached such an affidavit in any other contract which Contractor may have with City; or
- B. The Contractor or associated person has violated or participated in a violation of the Sherman Act (15 U.S.C. Sec. 1-2), or the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. Sec.1961-1968), or the Hobbs Act (18 U.S.C. Sec. 1951), or the mail or wire fraud statutes (18 U.S.C. Sec. 1341, 1343), the false statements statute (18 U.S.C. Sec. 1001), or other similar provision of Federal or State law in connection with this Contract or with any other contract which the Contractor or associated person has, had, or shall have with the City (including without limitation the submission of bids on such a contract); then the City shall have the right to withhold and retain any retainage described in this section as security for any damage claim arising from such action.

For purposes of this section, the term "associated person" shall include (a) in the case of a corporation: the corporation, its officers, directors, shareholders, employees and agents, and its parents, subsidiaries or affiliates, whether in existence at the time of the violation or subsequently formed or acquired; (b) in the case of a partnership or joint venture: the partnership or joint venture, its general or limited partners and joint venturers, its officers, employees and agents; and (c) in the case of a sole proprietorship: the individual proprietor, and his employees and agents. Where a partner or joint venturer is a corporation, the partnership or joint venture shall have attributed to it the

actions of persons attributable to the corporation under paragraph (a) of this subsection.

The City shall promptly notify the Contractor in writing of the exercise of its right to retain such amounts. In the event the work is more than fifty (50%) percent complete and the City has reduced its retainage to five (5%) percent, then following such notice the City shall thereafter retain ten (10%) percent from progress payments.

The City shall have the right to retain such funds until the City's damage claims are finally determined. The claim shall be "finally be determined" when a court of competent jurisdiction enters judgment on the merits of any claim made for damages by the City (unless City appeals that judgment, in which event, when the appeal is decided). In the event that City voluntarily waives his damage claim by written instrument signed on City's behalf, then such claim shall be "finally determined" at the time such waiver is effective. City covenants that it will commence an action for damages with respect to its damage claim as soon as practicable after it exercises its right for retaining such amounts for the causes set forth in this paragraph.

In the event such a claim is finally determined in favor of City, any amount of retainage for such claim shall be applied to satisfy the judgment. Any excess of retainage hereunder over the amount of such judgment, or in the event that a damage claim is finally determined in favor of Contractor or its associated person, the amount shall be promptly paid to Contractor, together with interest, at the applicable rate for post-judgment interest set forth in T.C.A. Sec. 47-14-121, provided that interest shall not be paid upon amounts which City could have otherwise properly retained under other provisions of this Contract.

Any claim, dispute, or other matter arising out of or relating to City's retention of payment for a damage claim under this section shall not be subject to arbitration. The City's failure to retain all or a portion of any payment due under this Contract pursuant to this section, even if grounds for such retention exists, shall not constitute a waiver of any of City's rights under this section.

- 8.6 Final Payment.** Upon completion of the work and after final acceptance of the work by the City, the Engineer will be authorized to prepare a final estimate of the work performed by the Contractor under these Contract Documents and to prepare a final payment request. Preparation of the final estimate and final payment request will not be authorized until the affidavits, releases of liens, certificate of occupancy issued by City of Chattanooga Inspection Department and other statements and certifications required of the Contractor under these Contract Documents have been received by the City. The Contractor shall also file the Notice of Completion with the appropriate office at the Hamilton County Tennessee Courthouse. The Engineer will submit to the City the final estimate and the final payment request, together with a certification stating that the work is complete and in substantial conformance with these Contract Documents. The entire balance found to be due the Contractor, including retained percentages,

but except such sums as may be retained under any provisions of these Contract Documents, will be paid to the Contractor.

Final payment to the Contractor by the City shall not serve to release the Contractor or his sureties from their obligations or responsibilities under or in connection with these Contract Documents.

**8.7 Acceptance of Final Payment as Release.** The acceptance by the Contractor of final payment shall be and shall operate as a release to the City of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with the work under these Contract Documents and for every act and neglect of the City and others relating to or arising out of this work.

**8.8 Contractor's Schedule of Values.** If the Contract is based on a lump sum bid, or contains one or more lump sum items for which progress payments are desired, the Contractor shall prepare and submit to the Engineer a schedule of values covering each lump sum item. The schedule of values, showing the value of each kind of work, shall be acceptable to the Engineer before any progress payment estimate and progress payment request are prepared. Such items as bond premium, temporary construction facilities, and plant may be listed separately in the schedule of values, provided the costs can be substantiated.

The sum of the items listed in the schedule of values shall equal the contract lump sum price(s). Overhead and profit shall not be listed as separate item.

An unbalanced schedule of values providing for overpayment of the Contractor on items of work which would be performed first will not be accepted. The schedule of values shall be revised and resubmitted until acceptable to the Engineer.

**8.9 Changes/Extra Work for Lump Sum Contracts.** The basis for payment for alterations or additions or extra work or decrease in scope of work shall be based on the Schedule of Values provided by the Contractor under para. 8.8 (above) or may be based upon the latest publication "Bid Data on Current Municipal Works." The maximum payment shall not be greater than an average of Contractor's Schedule of Values and the publication's average of the lowest bids.

## **9. MISCELLANEOUS SPECIAL PROVISIONS**

**9.1 Use of Work by City.** Prior to substantial completion, the City may use any completed or substantially completed portions of the work, provided that such use will not substantially affect the Contractor's rights and obligations under the contract. It is understood and agreed that said use shall not constitute an acceptance of any such portions of the work.

The City, or another Contractor under contract to the City, shall have the right to enter the premises for the purpose of doing work not covered by these Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of

any damaged work except such as may be caused by agents, employees, or other contractors of the City.

- 9.2 Inspection by Public Agencies.** Authorized representatives of the Environmental Protection Agency, Department of the Interior, Tennessee Department of Public Health, and other governmental agencies having jurisdiction over the work or any part thereof shall have access to the work and any records relevant to the prosecution and progress of the work. The Contractor shall provide proper facilities for such access and inspection.
- 9.3 Chemicals.** All chemicals used during project construction, or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer, reactant or of other classification, must show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in strict conformance with the manufacturer's or Engineer's instructions.
- 9.4 Siltation and Bank Erosion.** The Contractor shall take necessary steps to minimize siltation and soil erosion during construction to the satisfaction of the Engineer.
- 9.5 Contractor Licensing Act.** The "Contractor Licensing Act of 1976," as amended, T.C.A. Sec. 62-6-101, et seq, in its entirety is to be considered a part of these Contract Documents and incorporated herein as though specifically set forth. Copies of this Act can be obtained from the Contractor's Licensing Board, Nashville, Tennessee. Among other provisions, this Act requires that any contractor undertaking to construct, erect, alter, or repair any structure or municipal work, including sewerage and drainage systems, highways, roads, bridges, and similar structures or projects where the cost of the completed work will be equal to or in excess of Fifty Thousand (\$50,000.00) Dollars shall be licensed as required by the Act. Subcontracts involving Fifty Thousand (\$50,000.00) Dollars or more of electrical work, plumbing work, or heating, ventilating or air conditioning work must be done by licensed contractors. The Contractor is required to be a licensed general contractor, and where required by the Act, subcontractors must be licensed.
- 9.6 Hindrances and Delays.** The Contractor expressly agrees that the construction period named in these Contract Documents includes allowance for all hindrances and delays incident to the work. It is understood and agreed that no claim shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, except as provided otherwise under the terms of these Contract Documents.
- 9.7 Losses from Natural Causes.** It is understood and agreed that all loss or damage arising out of the nature of the work, or from the action of the elements, or from floods or overflows, or from ground water, or from seepage, or from any unusual obstruction or difficulty, or from any other natural or existing circumstance either known or unforeseen, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

**9.8 New Job Opportunities.** The Contractor shall, to the maximum extent practicable, follow hiring and employment practices that will insure the availability of new job opportunities for unemployed and underemployed persons. The Contractor shall insert, or cause to be inserted, a similar provision in each contract with Subcontractors or Suppliers.

END OF SECTION