

JOHNSON COUNTY SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1. DEFINITIONS AND TERMINOLOGY.

SC-1.01. Defined Terms.

- A. Delete and replace the following definitions in Paragraph 1.01.A of the General Conditions:
1. Addenda - The written or graphic instruments issued by the OWNER prior to the opening of Bids which modify or interpret the Bid Documents or Contract Documents by additions, deletions, clarifications or corrections.
 5. Bid - means the offer or proposal of the Bidder duly submitted on the prescribed form(s), including any and all required bid document submittals, contained within the Bid Documents and setting forth the prices for the Work to be performed in response to the Invitation to Bid.
 6. "Bidding Documents" or "Bid Documents" - mean and include the Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, the Bid Form, Bonds and all other bidding and contract forms to be modified consistent with these Instructions to Bidders and proposed Contract Documents, including General Conditions, Supplementary Conditions, Drawings, Specifications, and all Addenda and modifications issued prior to the opening of Bids.
 7. Bidding Requirements - The Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, Bid Form, Bid Security Form, Bonds and other bidding requirements and bidding and contract forms to be modified consistent with the Instructions to Bidders and proposed Contract Documents.
 8. Bonds - Bid, performance, statutory and maintenance bonds, if required, and other instruments of security.
 12. Contract Documents – The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation

submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Johnson County Supplementary Conditions, Additional Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

15. CONTRACTOR - means the individual, partnership, corporation, association or other entity that the County has determined and declared to be the Successful Bidder and who has, following such determination and declaration, thereafter entered into the Agreement with the County to perform the Work.
 30. OWNER – The individual, entity, public body, or authority with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be performed. OWNER means the Board of County Commissioners of Johnson County, Kansas.
 34. Project - means the total construction of which the Work performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
 42. Subcontractor - means the individual, partnership, corporation, association or other entity having a direct contract with the Contractor or any other subcontractor for the performance of a part of the Work at the site.
 44. Supplementary Conditions and/or Additional Supplementary Conditions – Those parts of the Contract Documents which amend or supplement these General Conditions.
- B. Add the following definitions to Paragraph 1.01.A of the General Conditions:
52. float - The amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the progress schedule.
 53. Owner's Agent. Owner's project manager who will be involved in the review and approval of applications for payment.

SC-1.02 Terminology.

- A. In Paragraph 1.02.C.1, insert the words “manual, code,” immediately preceding the word “inspection”.
- B. In Paragraphs 1.02.D.1.g, 1.02.D.2, and 1.02.D.3, add the words “and free of defects” to the end of each of these paragraphs immediately preceding the period.

SC-2. PRELIMINARY MATTERS.

SC-2.01. Delivery of Bonds and Evidence of Insurance. Delete Paragraph 2.01.A. in its entirety and insert the following in its place:

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and Evidence of Insurance as CONTRACTOR may be required to furnish under the Bidding Documents if not required to be provided earlier by the Bidding Documents or the Notice of Award.

SC-2.02. Copies of Documents. Delete Paragraph 2.02 of the General Conditions in its entirety and insert the following in its place:

- A. OWNER shall furnish to CONTRACTOR up to but not more than eight (8) copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies may be furnished, upon request, at the cost of reproduction to be borne by CONTRACTOR.

SC-2.03. Commencement of Contract Times; Notice to Proceed. Delete Paragraph 2.03.A of the General Conditions in its entirety and insert the following in its place:

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

SC-2.05. Before Starting Construction. Delete Paragraph 2.05.C of the General Conditions in its entirety and insert the following in its place:

- C. Prior to execution of the Agreement by OWNER, and before any work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5, and OWNER, upon request, shall deliver to CONTRACTOR, with a copy to ENGINEER, certificates (and other evidence of insurance CONTRACTOR may reasonably request) which OWNER may have purchased in accordance with Article 5.

SC-2.06. Preconstruction Conference. Amend Paragraph 2.06.A of the General Conditions by inserting "OWNER," immediately preceding "CONTRACTOR".

SC-2.07. Initial Acceptance of Schedules. Amend Paragraph 2.07.A of the General Conditions by: (a) inserting "OWNER," immediately before "ENGINEER" in the fourth line of this paragraph; and, (b) inserting the words "OWNER and" immediately before "ENGINEER" in the fifth line of this paragraph.

Amend Paragraph 2.07.A.1 of the General Conditions by: (a) inserting the words "OWNER and" immediately preceding "ENGINEER" in the first sentence of this paragraph; and, (b) inserting the words "OWNER or" immediately preceding "ENGINEER" in the second sentence of this paragraph.

Amend Paragraph 2.07.A.3 of the General Conditions by inserting the words "OWNER and" immediately preceding "ENGINEER".

SC-3. CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

SC-3.03. Reporting and Resolving Discrepancies. In the second sentence of Paragraph 3.03.A.1., delete the words "until an amendment or supplement" and replace them with the words "unless ENGINEER determines in writing that no conflict exists or if ENGINEER determines a conflict does exist, until an amendment or modification".

SC-4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.02. Subsurface and Physical Conditions.

- A. Amend Paragraph 4.02.A. of the General Conditions by: (a) deleting the words "Supplementary Conditions" and inserting in their place the words "Contract Documents"; and, (b) adding a "comma" immediately after the word "identify" followed by the words "if any".
- B. Amend Paragraph 4.02.B. of the General Conditions by: (a) inserting the words ", if any," immediately before the word "contained" in the third line of this paragraph; and, (b) deleting the words "Supplementary Conditions" in the sixth line and inserting in their place the words "Contract Documents".

SC-4.03. Differing Subsurface or Physical Conditions. Amend Paragraph 4.03.C.2.a. of the General Conditions by inserting in the second line of this paragraph immediately after the word "conditions" the following: "or reasonably should have known thereof".

SC-4.04. Underground Facilities. Amend Paragraph 4.04.A. of the General Conditions by deleting the words "Supplementary Conditions" in the seventh line of this paragraph and inserting in their place the words "Contract Documents".

SC-4.06. Hazardous Environmental Condition at Site.

- A. Amend Paragraph 4.06.A. of the General Conditions by deleting the words "Supplementary Conditions" in the second line of this paragraph and inserting in their place the words "Contract Documents".
- B. Amend paragraph 4.06.B of the General Conditions by deleting the words "Supplementary Conditions" in the sixth line of this paragraph and inserting in their place the words "Contract Documents".

SC-5. BONDS AND INSURANCE.

SC-5.01. Performance, Payment, and Other Bonds.

- A. Amend the first and second sentences of Paragraph 5.01.A of the General Conditions to read as follows:

CONTRACTOR shall furnish to OWNER Performance and Statutory Bonds, each in the amount equal to One Hundred percent (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect for two (2) years after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents.

SC-5.03 Certificates of Insurance. Add the following new Paragraph B immediately after Paragraph 5.03A of the General Conditions:

- B. The CONTRACTOR shall furnish to the OWNER's Purchasing & Risk Management Office and to the ENGINEER a certificate of insurance verifying such coverage and identifying the Board of County Commissioners, Johnson County, Kansas and the ENGINEER, their officers, commissions, employees and agents as additional insureds as pertains to this Agreement per 5.04.B.1. The certificate holder on the certificate of insurance shall read as follows:

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager
111 South Cherry, Suite 2400
Olathe, Kansas 66061-3441

The Bid Request Number shall be referenced on the Certificate of Insurance.

SC-6. CONTRACTOR'S RESPONSIBILITIES.

SC-6.02. Labor; Working Hours. In Paragraph 6.02.A., add the following to the end of the paragraph: "The CONTRACTOR shall be responsible for the employment and payment of competent survey personnel."

SC-6.08. Permits. Amend Paragraph 6.08 of the General Conditions by deleting the words "Supplementary Conditions" in the first and second lines, respectively, of this paragraph, and inserting in their place the words "Contract Documents".

SC-6.10. Taxes. Delete Paragraph 6.10.A. of the General Conditions in its entirety and insert the following in its place:

- A. The OWNER shall obtain a project exemption certificate for the PROJECT from the Kansas Department of Revenue and provide the same to the CONTRACTOR to be used by the CONTRACTOR for the sales of tangible personal property to or services purchased by the CONTRACTOR for the work or portions thereof that may be properly exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. Upon completion of the Work, the CONTRACTOR shall file with the OWNER on a form provided by the Kansas Department of Revenue, a sworn statement that all purchases made under the project exemption certificate were entitled to be exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. The CONTRACTOR shall assume responsibility and be liable for the proper use of the project exemption certificate and shall pay all legally assessed penalties for improper use of the certificate and any and all taxes that are not otherwise exempt under the certificate.

SC-6.15. Hazard Communication Programs. Add the following new Paragraph B immediately after Paragraph 6.15.A of the General Conditions which is to read as follows:

- B. Chemical Warranty-Compliance With Toxic Substance Control Act. Notwithstanding anything to the contrary contained in these Contract Documents or represented by either party to the other, CONTRACTOR warrants that each and every chemical substance or product offered, sold, handled or used for the proposed Work under this Agreement, or otherwise transferred by CONTRACTOR to agencies and departments of the OWNER as of the date of such sale or transfer shall comply with OSHA Hazard Communication Standard 29 C.F.R. 1910.1200.

SC-6.17. Resubmittal Costs. Add the following paragraph after Paragraph SC-6.17.F:

- "G. Resubmittal Costs. CONTRACTOR shall reimburse OWNER for ENGINEER's charges for reviewing each resubmittal in excess of one resubmission. ENGINEER will record time required by ENGINEER in

evaluating resubmitted Shop Drawings and Samples by CONTRACTOR pursuant to paragraphs 6.17.D.3 and submit a copy of the charges to CONTRACTOR and OWNER. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER. The charges shall be deducted by OWNER from the next submitted Payment Application of CONTRACTOR. CONTRACTOR shall not be entitled to any change in the Contract Price or Contract Times because of delay in the review process".

SC-6.19. CONTRACTOR's General Warranty and Guarantee. Insert the word "; or" at the end of Paragraph 6.19.B.8 of the General Conditions and add to the following Paragraph 6.19.B.9.

"9. any expiration of a correction period."

SC-6.20. Indemnification. Add the words "or furnish" to the fifth line of Paragraph 6.20.A.2 after the word "perform".

SC-6.20.C.3. Add this paragraph after Paragraph 6.20.C.2:

"Provided however, if the claim, damage, loss or expense referred to in Paragraph 6.20.A. results from failure of the ENGINEER to discover a condition or object which is underground or otherwise not reasonably observable by the ENGINEER, and if said failure to discover is apparent to the CONTRACTOR in that the said condition or object is omitted from the ENGINEER'S maps, drawings, opinions reports, surveys, change orders, designs or specifications, then the CONTRACTOR shall be liable for indemnification of ENGINEER under Paragraph 6.20 for damage resulting from said failure to discover unless CONTRACTOR shall have notified ENGINEER of the existence and location of such condition or object prior to the occurrence of such damage and in sufficient time for ENGINEER to have provision therefore. Further, in the event neither ENGINEER nor CONTRACTOR discover such condition or object, CONTRACTOR shall bear the burden of indemnification under Paragraph 6.20."

SC-8. OWNER'S RESPONSIBILITIES.

SC-8.02. Replacement of ENGINEER. Delete Paragraph 8.02.A of the General Conditions in its entirety and insert the following in its place:

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

SC-8.11. Evidence of Financial Arrangements. Delete Paragraph 8.11.A of the General Conditions in its entirety.

SC-9. ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03. Project Representation. Add the following new paragraph immediately after Paragraph 9.03.A of the General Conditions.

- B. If a Resident Project Representative is furnished under Paragraph 9.03 of the General Conditions, the duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in an exhibit attached to these Supplementary Conditions and made a part of the Contract Documents. The name(s) of the Resident Project Representative(s) will be furnished to the CONTRACTOR.

SC-9.09. Decisions on Requirements of Contract Documents and Acceptability of Work. Add the following at the end of the first sentence of Paragraph 9.09.A of the General Conditions: "insofar as the subject matter of any pertinent claim, dispute, or other matter falls within the realm of the technical expertise of ENGINEER, ENGINEER shall not render any decision on any claims, disputes, or other matters the subject matter of which, at ENGINEER's sole discretion, requires legal, rather than technical interpretation.

SC-9.09.B. Delete this paragraph in its entirety and replace it with the following:

- B. ENGINEER will be the initial judge of the acceptability of the Work. Claims relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work or seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of Paragraph 10.05. for recommendation by ENGINEER to OWNER. OWNER shall be the final determiner of the acceptability of the Work. ENGINEER shall not be liable to either OWNER or CONTRACTOR in connection with any recommendation. A recommendation of ENGINEER pursuant to this paragraph with respect to any Claim shall be a condition precedent to any exercise by CONTRACTOR of any rights or remedies otherwise available under the Contract Documents or by Laws and Regulations in respect to any Claim.

SC-10. CHANGES IN THE WORK; CLAIMS

SC-10.01. Authorized Changes in the Work. Add the following paragraphs after Paragraph 10.1.A:

1. The OWNER reserves the right to make modifications to the work included in this Contract to the extent that the total contract price Contract Price is not increased by more than 25 percent. Modifications which result in increases beyond this limit will be made only with the concurrence of the CONTRACTOR.

2. The CONTRACTOR shall not be entitled to an increase in the Contract Price resulting from delays to the Work due to weather conditions. Claims for an extension of the Contract Time may be made as provided in Article 12.

SC-10.05. Claims and Disputes. Delete Paragraph 10.05.B (including paragraphs 10.05.B.1 and 10.05.B.2) of the General Conditions in its entirety and insert the following in its place:

- B. ENGINEER'S Decision. ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. The rendering of a decision by ENGINEER pursuant to this paragraph 10.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

SC-11. COST OF THE WORK: CASH ALLOWANCES; UNIT PRICE WORK

SC.11.01. Cost of the Work. Insert the following after Paragraph 11.01.B.5.:

6. Sales, consumer, use and other similar taxes related to the Work that CONTRACTOR is liable.

SC-12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES.

SC-12.02. Change of Contract Times. Add the following new paragraphs after Paragraph 12.02.B of the General Conditions:

- C. A claim for an extension of the Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float for the delayed activity at the time of the event giving rise to the claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the OWNER and CONTRACTOR.
- D. CONTRACTOR shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to ENGINEER.

SC-13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.01. Notice of Defects. Amend Paragraph 13.01.A of the General Conditions by inserting in the first line of this paragraph immediately after the word "Prompt" the following: "written".

SC-13.03. Tests and Inspections. Amend Paragraph 13.03.A of the General Conditions by inserting in the first line of this paragraph immediately after the word "timely" the following: "written".

Amend Paragraph 13.03.F of the General Conditions by inserting in the third line of this paragraph immediately after the word "timely" the following: "written".

SC-14. PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02. Progress Payment. Amend the first line of Paragraph 14.02.A.1 of the General Conditions to read as follows: "At least thirty (30) days before the date".

Add the following new paragraphs immediately following Paragraph 14.02.A.3 of the General Conditions:

4. **Materials and Equipment.** Payments for stored materials and equipment shall be based only upon the actual cost to CONTRACTOR of the materials and equipment and shall not include any overhead or profit to CONTRACTOR. Partial payments will not be made for undelivered materials or equipment.
5. **Schedules and Data.** During the progress of the Work, each application for Payment shall be accompanied by CONTRACTOR's updated schedule of operations or progress report, with such shop drawings schedules, procurement schedules, values of materials and equipment on hand included in application, and other data specified or reasonably required by ENGINEER.

Amend the first line of Paragraph 14.02.B.1 of the General Conditions to read as follows: "ENGINEER or OWNER'S AGENT will, within seven (7) business days after".

Delete paragraph 14.02.C.1 of the General Conditions in its entirety and replace it with the following paragraphs:

1. Thirty days after presentation of the Application for Payment to Owner with ENGINEER's or OWNER'S AGENT's recommendation, the amount recommended (subject to the provision of paragraph 14.02.D) will become due and when due will be paid by OWNER to CONTRACTOR, unless extenuating circumstances exist which would preclude such payment by OWNER to CONTRACTOR. If such extenuating circumstances exist, then payment shall be made within forty-five (45) days after OWNER receives presentation of the Application for Payment."

2. CONTRACTOR shall pay its subcontractors any amounts due within seven (7) business days of receipt of payment from OWNER, including payment of retainage, if retainage is released by OWNER, if the subcontractor has provided a timely, properly completed and undisputed request for payment to CONTRACTOR. Further, CONTRACTOR shall require its subcontractors to pay their subcontractors in the same manner.

SC-16. DISPUTE RESOLUTION. Delete Article 16 of the General Conditions in its entirety.

SC-17. MISCELLANEOUS.

SC-17.04. Survival of Obligations. Add the following new paragraph immediately after Paragraph 17.04.A of the General Conditions:

- B. CONTRACTOR shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required by the Specifications, and shall assign such warranties and guarantees to OWNER. With respect thereto, CONTRACTOR shall render reasonable assistance to OWNER when requested, in order to enable OWNER to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the correction period or any other provisions of these Contract Documents.

SC-17.05. Controlling Law. Delete Paragraph 17.05 in its entirety and replace with the following paragraphs:

- A. The Contract Documents shall be governed, enforced and construed under the laws of the State of Kansas.
- B. Any action to enforce a right, duty or remedy in the Contract Documents, or at law or equity, shall be brought in the District Court of Johnson County, Kansas.
- C. All provisions contained in the Contract Documents are severable, and if, in the event any clause shall be held to be unconstitutional, invalid, or unenforceable by a Court of competent jurisdiction, the remainder of the Contract Documents shall be interpreted as if the unconstitutional, invalid or unenforceable clause(s) were not contained in the Contract Documents.
- D. The waiver of any party of a breach of any of the provisions of the Contract Documents shall not operate as, or be construed as, a waiver of any subsequent breach by either party. Any waiver of a breach by any party shall be in writing.

SC-17.06. Kansas Nondiscrimination Law. Add the following new paragraphs immediately after paragraph 17.05 of the General Conditions:

- A. The following provisions shall apply to this and all resulting contracts and subcontracts with and between all contractors, subcontractors, vendors, and/or suppliers connected with this Project, except (i) those whose contracts with the OWNER cumulatively total five thousand dollars (\$5,000) or less during the OWNER's fiscal year or (ii) those contracts with and between all contractors, subcontractors, vendors and/or suppliers who employ fewer than four (4) employees during the term of this Agreement:
- B. The CONTRACTOR shall observe the provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and amendments thereto, and the applicable provisions of the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and amendments thereto and shall not discriminate against any person in the performance of work under the present contract or in the admission or access to, or treatment or employment in, its programs or activities because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, ancestry or political affiliation;
- C. In all solicitations or advertisements for employees, the CONTRACTOR shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Commission on Civil Rights ("Commission");
- D. If the CONTRACTOR fails to comply with the manner in which the CONTRACTOR reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and K.S.A. 44-1116, and amendments thereto, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER; and
- E. If the CONTRACTOR is found guilty of a violation of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, or the ADA under a decision or order of the Commission which has become final, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER.
- F. The CONTRACTOR shall include the provisions of paragraphs 17.06.C through 17.06.F inclusively in every subcontract and purchase order so that such provisions will be binding upon such subcontractor or vendor.

SC-17.07. Right to Examine and Audit Records; Contract Change Order Procedures; Overcharges.

- A. The CONTRACTOR agrees that the OWNER, or any of its authorized representatives, shall have access to, and the right to examine and audit, any and all books, documents, papers and records (collectively the "Records") of the CONTRACTOR involving transactions related to the contract (the "Contract") between the OWNER and CONTRACTOR hereunder, or any change order or Contract modification thereto, or with compliance with any clauses thereunder. Such Records shall include hard copy as well as computer readable data. The CONTRACTOR shall require all of its payees including, but not limited to, subcontractors, insurance agents or material suppliers (collectively the "payee(s)") to comply with the provisions of this clause by including the requirements hereof in a written agreement between the CONTRACTOR and payee(s). Further, the CONTRACTOR agrees to cooperate fully and will require all of its payees to cooperate fully in furnishing or making available to the OWNER any and all such Records. The OWNER's right to examine and audit any and all Records hereunder shall survive termination of the Contract.

- B. The CONTRACTOR agrees to follow the quality control change order processing system (the "System") utilized by ENGINEER and OWNER to ensure that any and all Contract change orders or Contract modifications (collectively the "Change Order(s)") that may be necessitated and result during the course of the performance of work or services rendered (the "Work") pursuant to, and under the requirements of, the Contract are warranted and properly processed. The System shall serve as a means for OWNER and CONTRACTOR representatives to ensure the propriety, justification and timeliness of the Change Order(s), the reasonableness and accuracy of the price for the Change Order(s), and full documentation to enable the parties to examine how the price was determined, reviewed, evaluated, negotiated, and accepted or rejected.

- C. The CONTRACTOR agrees that if at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the OWNER and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the CONTRACTOR, or any of its officers, employees, subcontractors, agents or payees, then the CONTRACTOR, or any of its assigns or successors, shall, within thirty (30) days of receipt of written notice from the OWNER, refund upon demand, and be and remain liable to the OWNER for payment of, any such overcharges revealed, including interest thereupon, for the audited period, as well any and all out-of-pocket costs incurred by the OWNER with respect to conducting the audit and collecting the overcharges. Neither shall the making and acceptance of final payment under the Contract nor the

termination of the Contract constitute a waiver of any claim on the part of the OWNER to make demand upon the CONTRACTOR for any such overcharges and related costs thereto; provided, further, that any such demand of the OWNER made upon the CONTRACTOR shall not be subject to the claims and disputes procedural requirements or provisions, if any, of the Contract, but shall remain a continuing obligation of the CONTRACTOR until satisfied.

END OF SUPPLEMENTARY CONDITIONS