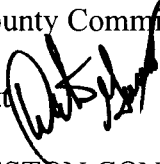




NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
 P.O. Box 1010
 Fernandina Beach, Florida 32035-1010

Jim B. Higginbotham Dist. No. 1 Fernandina Beach
 John A. Crawford Dist. No. 2 Fernandina Beach
 Tom Branan Dist. No. 3 Yulee
 Chris Kirkland Dist. No. 4 Hilliard
 Jimmy L. Higginbotham Dist. No. 5 Callahan

TO: Board of County Commissioners

FROM: Walt Gossett 

SUBJECT: ROY F. WESTON CONSULTANTS CONTRACT (Landfill)

DATE: October 18, 1995

T. J. "Jerry" GREESON
 Ex-Officio Clerk

MICHAEL S. MULLIN
 County Attorney

WALTER D. GOSSETT
 County Coordinator

Request the Board sign the enclosed contract for continued services by Roy F. Weston Inc. for engineering oversight, construction management and quality assurance, operations assistance, regulatory assistance, and general solid waste management oversight assistance.

The estimate is for services over the next three years on a month-to-month retainer basis. (See Attachment F)



Nassau County Department of Solid Waste Management

ROUTE 1, BOX 178
CALLAHAN, FL 32011

Joyce
ROBERT P. McINTYRE
Director

Handwritten initials, possibly "D", in a stylized cursive font.

To: Michael Mullin, County Attorney
From: Robert P. McIntyre *Bob*
Date: October 12, 1995
Subject: General Conditions Contract

Here is a copy of the General Conditions Contract for your files supplied by Roy F. Weston. Please review and respond .

ok *M.S.B.*

cc: Walt Gossett, County Coordinator

c:\bob\contract_cond

SECTION B
GENERAL CONDITIONS OF THE CONTRACT

TABLE OF CONTENTS

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GENERAL CONDITIONS

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The Contract Documents

The Contract Documents consist of the Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to execution of the Contract, and all modifications thereto. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order; (3) a written interpretation issued by the Engineer pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Engineer pursuant to Paragraph 12.4. A Modification may be made only after execution of the Contract. The Contract Documents do include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's bid or portions of the Addenda relating to any of these, or any other documents, as specifically enumerated in the Owner-Contractor Agreement. In the event of any ambiguity and/or inconsistency among the various Contract Documents, a later dated version will hold true.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior or contemporaneous negotiations, representation, communications, or agreements, either written or oral and has not been induced by any representations, statements, or agreements, other than those expressed herein.

The Contract may be amended or modified only by a written Modification signed by the Parties as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor; but the Engineer shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Engineer and any Subcontractor or Sub-tier subcontractor.

1.1.3 THE WORK

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

1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed in not less than six copies by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Engineer shall identify such documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited and examined the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.3 COPIES FURNISHED AND OWNERSHIP

1.3.1 The successful bidder shall be given after the award of the Contract, five sets of Drawings and Specifications without charge for use on the Project. Additional Drawings and Specifications will be supplied at the Contractor's expense.

1.3.2 All Drawings, Specifications and copies thereof furnished by the Engineer are and shall remain the property of the Owner. (1) Such documents are not intended or represented to be suitable for other than the use specified in the Contract Documents and are to be returned to the Engineer of the Owner on request at the completion of the Work. (2) Such documents are not for reuse by Contractor or others on extensions of the work or on any other work or for any other purpose. Any reuse of such documents without prior written verification or adaptation by Owner for the specific purpose intended will be at Contractor's sole risk and without liability or legal exposure to Owner.

ARTICLE 2

ENGINEER

2.1 DEFINITION

2.1.1 The Engineer is the person lawfully licensed to practice engineering, or an entity lawfully practicing engineering identified as such in the Owner-Contractor Agreement. The term Engineer means the Engineer or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Engineer will provide administration of the Contract as hereinafter described.

2.2.2 The Engineer will be the Owner's representative during construction and until final payment is due. The Engineer will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Engineer. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.

2.2.3 The Engineer may visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an Engineer, he will keep the Owner informed of the progress of the Work, and in conjunction with the Construction Quality Assurance (CQA) Manager, will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor,

Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Engineer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Engineer may perform his functions under the Contract Documents.

2.2.6 Based on the Engineer's observations and an evaluation of the Contractor's Applications for Payment, the Engineer will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in Paragraph 9.2.

2.2.7 The Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor.

2.2.8 The Engineer will render written interpretations of the Contract Documents with reasonable promptness on written request of either the Owner or the Contractor and shall render written recommendations to the Owner within a reasonable time on all claims, disputes and other matters in question between the Owner and the Contractor relating to the Work or the interpretation of the Contract Documents.

2.2.9 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract

opinion after the appeals process has been initiated, such opinion may be entered as evidence but will not supersede any appeal proceedings unless the opinion is acceptable to all parties concerned.

2.2.12 The Engineer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.5.2 whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.13 The Engineer will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.14 The Engineer will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work, as provided in Subparagraph 12.4.1.

RECEIVED
OCT 18 1995



Roy F. Weston, Inc.
1880-H Beaver Ridge Circle
Norcross, Georgia 30071
404-263-5400 • Fax 404-263-5450

October 17, 1995

Honorable James L. Higginbotham
Chairman
Nassau County Board of County Commissioners
P.O. Box 1010
Fernandina Beach, FL 32034

RE: Continuation of Engineering Oversight, Construction Management, Construction Quality Assurance, Operations Assistance, Regulatory Assistance, and General Solid Waste Management Oversight Assistance

Dear Commissioner Higginbotham:

Roy F. Weston, Inc. (WESTON®) is pleased to provide this proposal for continued service to Nassau County, Florida, for Third Party Engineering Services and Owner's Representation relative to construction and operation activities at the West Nassau Landfill site and related solid waste management system support as referenced herein. Our proposal reflects our estimated price to provide the services projected to be needed over the course of the next three fiscal years. The nature of these services is defined in Attachments A, B, C, D, and E. Our estimate to provide these services is included as Attachment F. As discussed with Mr. Walter Gossett, we are offering these services to Nassau County on a monthly retainer basis, reflecting fixed labor costs during the three-year period.

Construction at the West Nassau Landfill has been completed through Cells 1, 2, and 3, including the vertical expansion area above these cells. Construction of the bottom of Cells 4 and 5 is currently being conducted by Western Waste Industries and is anticipated to be completed during the 4th quarter of 1995. Additional construction activities that are anticipated include the vertical expansion area above Cells 4 and 5 and the next phase of "footprint" construction (currently assumed to be Cells 6, 7, and 8). Attachment A describes WESTON's responsibilities related to project construction management and engineering oversight. Construction quality assurance activities will be directly linked to cell construction activities, as described in Attachment B.

Given that Nassau County will begin taking over operations from Western Waste and additional waste will be received from Clay County beginning in the 4th quarter of 1995, WESTON has assumed operational assistance will be necessary on an on-going basis throughout the contract term. Initially, during the 4th quarter of 1995 and 1st quarter of 1996, this assistance is assumed to be significant to develop necessary operating plans and procedures. These operational services are described in further detail in Attachment C.

In addition, the County is required to submit a permit renewal at the end of the first calendar quarter of 1996 (April 1). This permit renewal is assumed to include updates to the existing plans as well as an overall increase in filling over the existing permitted lined areas. This increase in elevation is anticipated to create an additional one million cubic yards of air space without incurring additional cell construction costs. WESTON will oversee the development of the





Honorable James L. Higginbotham
October 17, 1995
Page 2

necessary submittals to FDEP and provide technical assistance with the regulatory agencies, as described in Attachment D.

WESTON will provide assistance in other solid waste management areas as needed and requested, including oversight of subconsultants. We have identified these areas as we understand them to be at this time in Attachment E.

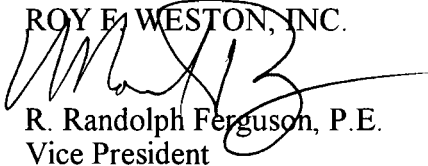
As mentioned previously, WESTON's services will be billed to the County on the basis of a fixed monthly retainer. This retainer will remain constant for the first five months of fiscal year 1996; for the remaining six months of fiscal year 1996, the retainer will decrease in correspondence with the level of effort expected during this time period. The fixed-rate retainer will decrease further for fiscal years 1997 and 1998.

It has been a pleasure to work with Nassau County over the past four years to provide an environmentally sound and economically acceptable method of solid waste management. WESTON's proposal reflects our continued commitment to Nassau County and to the goal of establishing the West Nassau Landfill as the premier publicly owned and operated facility in Florida. We intend to maintain a strong presence with essential expertise to ensure that your goals can be met.

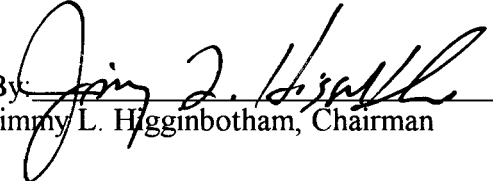
I look forward to reviewing this proposal with you. If you have any questions, please call me at (770) 263-5400.

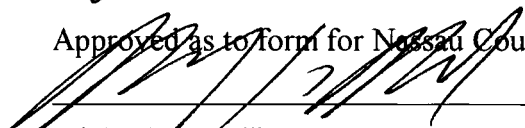
Sincerely,

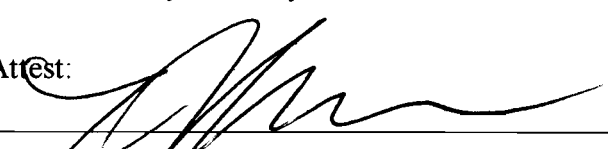
ROY F. WESTON, INC.


R. Randolph Ferguson, P.E.
Vice President

NASSAU COUNTY FL Board of Commissioners

By: 
Jimmy L. Higginbotham, Chairman

Approved as to form for Nassau County:

Michael S. Mullin
Nassau County Attorney

Attest:

T. J. "Jerry" Greeson, Nassau County
ex-officio Clerk, Board of County Commissioners

RRF/smo
Enclosure



ATTACHMENT A

RESPONSIBILITIES FOR CONSTRUCTION MANAGEMENT AND ENGINEERING OVERSIGHT WEST NASSAU LANDFILL

- Contractor procurement, including:
 - Management of preparation of bid documents
 - Assistance in contractor selection
 - Assistance in contract negotiation
 - Pre-bid/pre-construction meetings

- Construction master planning, including:
 - Phasing of cell construction
 - Funding availability's impact on cell phasing

- On-site monitoring of:
 - Construction schedule and progress
 - Permit compliance (construction and operational)
 - Safety
 - Verification
 - Compliance with technical specifications
 - Requests for payments

- Reporting of:
 - Inspection results
 - Certification for release of funds
 - Identification of potential construction or operational issues



ATTACHMENT B

RESPONSIBILITIES FOR CONSTRUCTION QUALITY ASSURANCE WEST NASSAU LANDFILL

- Full-time on-site monitoring and third party testing of:
 - Liner installation
 - Sub base
 - Geogrid
 - Clay
 - HDPE
 - Geotextile
 - Leachate Collection System
 - Piping
 - Construction of sump
 - Drainage layer
 - Placement of protective cover
- Preparation and submittal of construction quality assurance report
- Participate in FDEP site inspection for certification to open.



ATTACHMENT C

RESPONSIBILITIES FOR OPERATIONS ASSISTANCE WEST NASSAU LANDFILL

- Develop/update refuse fill sequencing plans
- Develop refuse fill access road(s) design
- Develop/update Operations plan
- On-site monitoring of:
 - Refuse fill progress
 - Operational procedures
 - Permit compliance
 - Safety



ATTACHMENT D

RESPONSIBILITIES FOR PERMIT UPDATES/REGULATORY ASSISTANCE WEST NASSAU LANDFILL

- **Oversee and support preparation of permit renewal/modification, including:**
 - **Development of revised final grading plan incorporating increased elevation of top deck**
 - **Preparation of permit renewal for submittal to FDEP**
- **General regulatory assistance, including:**
 - **Meetings**
 - **Responses to requests for information**



ATTACHMENT E

RESPONSIBILITIES FOR GENERAL SOLID WASTE MANAGEMENT ASSISTANCE

- Verification and reviews of:
 - Construction fund investments
 - Budgeting items
 - Quarterly groundwater and gas monitoring data for West Nassau, Lofton Creek, and Bryceville
 - Quarterly operational reports for FDEP
 - Ongoing groundwater contamination assessment and gas remedial action at Bryceville and Lofton Creek, as necessary
- Preparation of:
 - Groundwater reports, including interpretation and reporting of data
 - Closure/post closure estimates for Bryceville, Lofton Creek, and West Nassau for submittal to FDEP to comply with financial assurance requirements.
 - NPDES reporting requirements
- Ongoing closure/post closure compliance at Lofton Creek, Bryceville, and West Nassau, including:
 - Preparation and final submittal of Construction Quality Assurance Report
 - Participate in FDEP site inspection for Closure Certificate
 - Assistance in final resolution of construction issues.

PRICING THROUGH 9/30/98

ATTACHMENT F

Period	Monthly WESTON Labor ²	Average Monthly Permitting Support ³	Total Monthly Retainer	Total Per Period ⁴
October 1995 - March 1996	\$50,500	\$38,200	\$88,700	\$443,500
April 1996 - September 1996	44,800	--	\$44,800	268,800
October 1996 - September 1997	36,600	--	\$36,600	439,200
October 1997 - September 1998	36,600	--	\$36,600	439,200
TOTAL				\$1,590,700

¹Fixed labor rates representing basis of retainer amounts are summarized in Attachment G.

²Retainer amounts do not include effort related to:

- Field work or reporting associated with implementation of remedial action plans
- Development of groundwater and methane remediation plans and routine groundwater and methane monitoring
- Special projects not anticipated
- Services associated with lateral expansion beyond current permitted areas

³HMA, Inc. to retain engineer-of-record role for permit modification and renewal activities associated with existing West Nassau Class I landfill. Average monthly cost for HMA support based on cost estimates provided for the following tasks:

- a) Geoprobe Investigation/Lateral Methane Assessment Report
- b) Permit Compliance Calendar
- c) East Closure Slope Vertical Expansion Construction documents
- d) Class I Vertical Expansion and Permit Renewal

Retainer does not include effort related to responses to FIDBP comments/requests for additional information.

⁴Total cost per period does not include expenses. Project expenses estimated at 14% of WESTON's labor cost to be billed at cost. Expenses related to construction quality assurance testing estimated as follows:

- a) \$12,000/month during clay liner and leachate collection system placement
- b) \$2,000/month during geosynthetics installation

NASSAU COUNTY AND WESTON RESERVE THE RIGHT TO RENEGOTIATE THE RETAINER AMOUNTS ANNUALLY OR MORE FREQUENTLY AS DEEMED NECESSARY.

WASSHO SOLID WASTE DIST. TEL: 904 201 5410 FAX: 904 201 5411
DATE: 10/19/95 10:44 AM 01/1/02

**ATTACHMENT G
FIXED LABOR RATES**

LABOR CATEGORY	RATE
Principal-in-Charge	135
Proj. Mgr. - Operations	95
Proj. Mgr. - Design/Const.	100
Project Director	145
Engineer III	78
Engineer II	65
Planner II	60
Engineer I	45
Geologist III	95
CADD Operator II	45
Word Processor II	37
Engineering Asst. II	35
Project Analyst I	35
Contract Specialist	75



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P.O. Box 1010
Fernandina Beach, Florida 32035-1010

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Dist. No. 5 Callahan

T. J. "Jerry" GREESON
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

WALTER D. GOSSETT
County Coordinator

October 26, 1995

Roy F. Weston, Inc.
1880-H Beaver Ridge Circle
Norcross, GA 30071

Attn: R. Randolph Ferguson, P.E.
Vice President

Dear Mr. Ferguson:

Enclosed is a fully executed copy of the contract with your company for the continuation of engineering oversight, construction management, construction quality assurance, operations assistance, regulatory assistance, and general solid waste management oversight assistance as approved by the Nassau County Board of County Commissioners on October 23, 1995.

It has been a pleasure to work with your organization, and we look forward to your continued excellent service.

Sincerely,

T. J. "Jerry" Greeson
Ex-Officio Clerk

jmg

Enclosure

cc: Walter D. Gossett, County Coordinator
Robert McIntyre, Solid Waste Director

(904) 225-9021 Board Room; 321-5703, 879-1029, 355-6275

An Affirmative Action / Equal Opportunity Employer

2.2.15 The Engineer will conduct inspections to determine the dates of Substantial

Completion and final completion, will receive and forward the Owner for the Owner's review written warranties and related documents required by the contract and assembled by the Contractor, and will issue and final Certificate for Payment upon compliance with the requirements of Paragraph 9.8.

2.2.16 If the Owner and Engineer agree, the Engineer will provide one or more project Representatives to assist the Engineer in carrying out his responsibilities at the site. The duties, responsibilities and limitations of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitation of authority of the Engineer as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Engineer.

2.2.18 In case of the termination of the employment of the Engineer, the Owner shall appoint an Engineer against whom the Contractor makes no reasonable objection whose status under the Contract Documents shall be that of the former Engineer. Any dispute in connection with such appointment shall be subject to appeal in accordance with Subparagraph 7.7.1.

2.2.19 Contractor and Owner believe that Contractor's professional services provided to Owner under this Agreement are not subject to sales and use tax. Contractor acknowledges that

the obligations to pay the sales and use tax and other similar taxes as required by law, if applicable to the Contractor's services and/or purchases, shall remain with the Contractor.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement. The term Owner means the Owner or his authorized representative. Wherever the term "Owner" is used in the specifications or other Contract Documents, it refers to the Nassau County, Florida and the Nassau County Solid Waste Management Department, or the Owner's authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall furnish all surveys describing the physical characteristics, legal limits and utility locations for the site of the Project. The Contractor shall review the figures shown on all such surveys before undertaking any construction work. The Contractor shall immediately upon entering the project site for the purpose of beginning work, locate all general reference points and bench marks and take such action as is necessary to preserve or replace them and prevent their destruction. He shall record the location and elevation of each bench mark and shall make no changes in locations without the written approval of the Owner.

3.2.2 The Owner shall at no cost to Contractor secure all necessary easements for permanent structures or permanent changes in existing facilities.

3.2.3 Except as provided in Subparagraph 4.6.1, the Owner shall secure at no cost to Contractor necessary approvals, easements, rights of way, assessments and charges required for the construction, use or occupancy of permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.5 The Owner shall forward all instructions to the Contractor through the Engineer.

3.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11, respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or substantially fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give

rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S USE OF PREMISES

3.4.1 The Owner reserves the right, upon written notice to the Contractor, to utilize any portion of the Work prior to Substantial Completion. Such utilization shall not constitute acceptance of the work in whole or in part or otherwise affect the rights or responsibilities of the parties except as specifically provided in this Paragraph 3.4.

3.4.2 During any such partial utilization, mutually acceptable arrangements shall be made between the Owner and Contractor regarding the operation and guarantees respecting the portion of the Work affected by utilization.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall immediately report to the Engineer any error, inconsistency or omission he may discover. The

Contractor shall not be liable to the Owner or the Engineer for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents, or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall furnish the services of all necessary engineers, designers, draftsmen, and other personnel necessary for the performance of the work hereunder. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor warrants to the Owner and the Engineer that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.3.3 The Contractor warrants to Owner that it possesses the expertise, capability, equipment and personnel to properly and professionally perform its services hereunder, that it is properly and legally licensed (if applicable) to perform such services, and that it shall at all times in the performance of such services comply with all applicable laws, ordinances, and regulations

and shall perform all services in a good, workmanlike, professional, efficient and non-negligent manner.

4.3.4 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. Contractor shall indemnify and hold harmless Owner and Engineer from any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from Contractor's performance hereunder.

4.3.5 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer in his administration of the contract, or by inspections, tests or approvals required or performed under Paragraph 7.5 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools and construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The Contractor shall employ specified materials and methods unless they are contrary to manufacturer's direction or recommended trade practices or unless he believes they will not produce results which he will guarantee as required; in which case, he shall promptly notify the Engineer in writing and request a determination. Deviation from materials and procedures specified will be permitted only upon Engineer's approval and providing work is guaranteed by Contractor. The naming of products in the specifications does not imply Engineer's approval of deviations either from accompanying specifications or from manufacturer's specifications incorporated by reference.

4.4.3 Where one or more products are named in the specifications and the phrases "or equal", "or approved equal" or their equivalent accompanies the listing, requests for approval or substitute products will be considered after award of contract only. Requests shall be made in writing including all information, such as delivery dates and descriptive data, and all samples required by the Engineer, together with the amount to be added to or deducted from the contract price for such substitution. For substitutions to be considered, requests for substitutions including complete data and samples substantiating compliance of proposed substitution must be submitted within ten (10) calendar days of the issuance of the Notice-to-Proceed. Decisions of the Engineer as to whether a product proposed for substitution is fully equal will be final. When products are named in the specifications but are unaccompanied by the phrases "or equal", or "approved equal", or their equivalent, applications for approval of substitute products will not be considered at any time.

4.4.4 When any specified item or "approved equal" item of equipment or material is submitted which required changes or additions or material is submitted which required changes or additions because its requirements exceed or are different from those shown on the Contract Documents, such changes shall be made at no additional cost to the Owner or the Engineer, and shall be itemized in writing and attached to the submittal. No changes shall be made without approval in writing from the Engineer. The requirements of this Paragraph apply also when no manufacturer is named and when more than one manufacturer is listed as acceptable.

4.5 PERMITS, FEES AND NOTICES

4.5.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure all licenses in Contractor's name and reasonably assist Owner in obtaining all other licenses and permits required for expansion of the landfill, and construct the landfill so that it will meet all construction and operating permit requirements in effect as of the effective date of the execution of this Contract. The Owner shall pay fees for water and sewer availability, extension of water, sewer and/or gas mains, and County or State road permits. The Owner shall arrange for utility connections required to serve the project as indicated in the Contract Documents and pay for building/grading permits, inspections or connection fees required by governing authorities. It is not the responsibility of the Contractor to make certain that the Drawings and Specifications are in accordance with applicable laws, statutes, building codes and regulations, except that it shall be the duty of the Contractor to promptly notify the Engineer whenever he becomes aware that any element of the drawings and specifications is not in accordance with such laws, statutes, codes and regulations. In the event that the Contractor shall fail to so notify the Engineer, the Owner

shall not be responsible to the Contractor for any delays and costs incident thereto for work required to bring the project into conformity with applicable laws, statutes, codes and regulations.

4.5.2 Any notice, communications, or statement required or permitted to be given hereunder, unless otherwise stated herein, shall be in writing and be deemed to have been sufficiently given when delivered in person or sent by telex, wire or by certified mail, return receipt required, postage prepaid, to the designated address of the respective party.

4.5.3 If the Contractor performs any Work knowing it to be contrary to the applicable laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.6 ALLOWANCES

4.6.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.6.2 Unless otherwise provided in the Contract Documents:

- .1 These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;

- .2 the Contractor's costs of unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated of the original allowance shall be included in the Contract sum and not in the allowance;
- .3 whenever the cost is more than or less than the allowance, the contract sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.7 SUPERINTENDENT

4.7.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.8 PROGRESS SCHEDULE

4.8.1 The Contractor shall within five days after issuance of the Notice-to-Proceed or within such time as determined by the Engineer (no later than date of commencement of work) prepare and submit to the Engineer for review a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing same. The schedule shall be in the form of a Bar Chart or Arrow Diagram of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time and

each activity be resource loaded to indicate planned equipment and manning. The Contractor shall enter on the chart the actual progress on a monthly basis in accordance with the monthly Progress Payment Request, and shall deliver two copies of the updated chart to the Engineer with the progress schedules within the time prescribed, the Engineer may withhold approval of Progress Payment Requests until such time as the Contractor submits the required progress schedule.

4.8.2 If, in the opinion of the Engineer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Engineer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the matter in which the agreed rate of progress will be regained, all without additional cost to the Owner.

4.8.3 Failure of the Contractor to comply with the requirements of the Owner under this provision shall be grounds for determination by the Engineer that the Contractor is not prosecuting the Work with such diligence as will insure completion within the time specified. Upon such determination the Owner may terminate the contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the contract entitled "TERMINATION BY THE OWNER".

4.9 DOCUMENTS AND SAMPLES AT THE SITE

4.9.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and

marked currently to record all changes made during construction, and approved shop Drawings, Products Data and Samples. These shall be available to the Engineer and shall be delivered to him for the Owner upon completion of the Work.

4.9.2 Prior to the request for final payment, submit to the Engineer for the Owner three (3) complete sets of Operation and Maintenance Manuals. The manuals shall be bound in plastic-covered, 3-ring, loose-leaf, binder with the title of the project lettered on the front. The sheets shall be 8 1/2" x 11", except pullout sheets may be neatly folded to 8 1/2" x 11". The manuals shall contain the manufacturers instructions for maintenance and operation of equipment and apparatus furnished under the contract and any additional data specifically required under the various Sections of the Specifications. These manuals shall be arranged in proper order and indexed. Manuals shall be assembled for all Divisions of the work, reviewed for completeness and submitted to the Engineer in a suitable transfer case. As a minimum the manuals will contain the following information: a. Name, address, and trade of all Subcontractors. b. Complete maintenance instructions; name, address, telephone number of the installing Subcontractor and manufacturer's local representative of each piece of operative equipment.

4.9.3 As the work progresses keep a complete and accurate record of changes or deviations from the Contract Documents and shop drawings, indicating the work as actually installed, including locations and size of concealed pipes, conduit, ducts, etc. Changes shall be neatly and correctly shown on the respective portion of the affected documents; using blackline prints of the Drawings or the Specifications, with appropriate supplemental notes. This record set of Drawings, shop drawings and Specifications shall be kept at the job site for inspection by

the Engineer and the Owner. At completion of the project, transfer all notations on the record drawings to reproducible drawings of the facility. Prior to the request for final payment, submit to the Engineer for the Owner the record documents and reproducible drawings. Provide suitable transfer case and deliver the records therein, indexed and marked for each Division of Work. No review or receipt of such records by the Engineer or Owner shall be a waiver of any deviation from the Contract Documents or the shop drawings or in any way relieve the Contractor from his responsibility to perform the work in accordance with the Contractual Documents.

4.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.10.4 The Contractor shall review, approve and submit to the Engineer with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner

or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.10.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and filed construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.10.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Engineer's approval thereof.

4.10.7 The Contractor shall direct specific attention, in writing or on resubmitted shop Drawings, Product Data or Samples, to revisions other than those requested by the Engineer on previous submittals.

4.10.8 No portion of the Work requiring submission or a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Engineer as provided

in Subparagraph 2.2.13. All such portions of the Work shall be in accordance with approved submittals.

4.11 USE OF SITE

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

4.12 CUTTING AND PATCHING OF WORK

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

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

4.13 CLEANING UP

4.13.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall

remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.13.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 14.2 and the cost thereof shall be charged to the Contractor.

4.14 COMMUNICATIONS

4.14.1 The Contractor shall forward all communications to the Owner through the Engineer.

4.15 ROYALTIES AND PATENTS

4.15.1 The Contractor shall pay all royalties and licenses and indemnify and hold harmless (including attorneys' fees) owner and any employee or agent against all liability to third parties arising from or in connection with the violation of any third party trade secrets, proprietary information, trademark, copyright or patent rights in connection with the performance of the work hereunder except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer and the Owner.

4.16 INDEMNIFICATION

4.16.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and save harmless the Owner and the Engineer and their directors, officers, partners, agent and employees from and against all claims, damages, losses, judgements and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from contractor's, its Subcontractors' and any sub-tier contractors' performance of the work hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.16. For any claims that are caused solely by the negligence or willful misconduct of Owner, Owner shall indemnify and hold harmless Contractor, its officers, directors, successors and assigns against such claims. Contractor's obligation to indemnify Owner or any employee or agent thereof shall survive the expiration or termination of this Contract by either party for any reason.

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

4.16.3 The obligations of the Contractor under this Paragraph 4.16 shall not extend to the liability of the Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the

giving of or the failure to give directions or instruction by the Engineer, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

4.17 CONSTRUCTION PHOTOGRAPHS

4.17.1 The Contractor shall provide construction progress photographs of the project as follows:

- a) Two (2) prints of Three (3) different views of site prior to start of construction;
- b) Three (3) different views of site taken each month and submitted to the Engineer with monthly requisition;
- c) Three (3) different views of the completed Stage 1 construction.

4.17.2 Photographs shall be glossy black and white, 8x10 inches, mounted on linen, with a one-inch flap at the left for binding. They shall be properly identified as to contract number, and location, and numbered consecutively starting with number one (1), in the order in which taken. This information shall be placed in the margin at the bottom. The negatives become the property of and shall be delivered to the Owner with the Application for Final Payment.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the

Contract Documents and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate Contractor or his subcontractors.

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

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

5.2.1 Unless otherwise required by the Contract Documents or the bidding Documents, the Contractor, within 10 days after the award of the Contract, shall furnish to the Owner and the Engineer in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Engineer to reply within 5 days shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Engineer has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the Owner or the Engineer has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner or the Engineer has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Engineer makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the contractor, by these Documents, assumes toward the Owner and the Engineer. Said agreement shall preserve and protect the rights of the Owner and the Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the Subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-tier subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the

execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-tier subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

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

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

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

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introductions and storage of their materials and equipment and the execution

of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

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

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

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage at no additional cost to Owner.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such

proceedings at the Owner's expense, and if any judgement or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 SUCCESSORS AND ASSIGNS

7.1.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the contract shall assign, subcontract or otherwise transfer this Contract or any rights or obligations hereunder to a subsidiary, successor, affiliate or any third party, except as expressly provided herein without the prior written consent of the other party, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.2 CLAIMS FOR DAMAGES

7.2.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other party within twenty (20) days after the occurrence of the event giving rise to each claim or within such other time as

specifically provided in these general conditions and other contractual documents after the first observance of such injury or damage.

7.3 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.3.1 The Contractor shall deliver to the Owner a performance bond in the amount of 100% of the contract sum and a separate labor and material payment bond in the amount of 100% of the contract sum. The Contractor shall pay the premium for such bonds. These bonds shall be written on forms approved by the Owner, and shall be furnished by companies satisfactory to the Owner.

7.4 RIGHTS AND REMEDIES

7.4.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available to either party by laws or regulations, by special warranty or guarantee or by any provision of this Contract. This provision is effective as if specifically incorporated into each and every provision of this Contract imposing a duty or obligation on one of the parties.

7.5 TESTS

7.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any regulatory authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Engineer timely notice of its readiness so the Engineer may observe such inspection, testing or approval. The Owner shall bear all costs of such

inspection tests or approval required by public authorities. Unless otherwise provided, the Owner shall bear all cost of other inspections, tests or approvals.

7.5.2 If the Engineer determines that any Work required special inspection, testing, or approval which Subparagraph 7.5.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.5.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Engineer's additional services made necessary by such failure; otherwise the Owner shall bear such costs.

7.5.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Engineer.

7.5.4 If the Engineer is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the source of supply.

7.6 INTEREST

7.6.1 Payments are due within thirty (30) days of the receipt of invoice and any unpaid invoices under the Contract Documents will be assessed a late charge of one (1) percent per month for any amounts not paid within sixty (60) days of the billing date.

7.7 DISPUTES

7.7.1 Except as otherwise provided in these contractual documents, any claim, dispute or other matter in questions concerning a question of fact shall initially be referred to the Project Coordinator (Owner's representative).

7.7.2 Any claim, dispute or other matter in question concerning a question of fact referred to the Project Coordinator shall be subject to appeal upon written demand of the Contractor. However, no demand for appeal of any such claim, dispute or other matter may be made until the earlier of (1) the date on which the Project Coordinator has rendered a written opinion to the Contractor or (2) the tenth day after the Contractor has presented his evidence to the Project Coordinator, if the Project Coordinator has not rendered his written opinion by that date.

7.7.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any disputes proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the contract time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion with the contract time.

8.2.3 If a date or time of completion is included in the Contract, it shall be the Date of Substantial Completion as defined in Subparagraph 8.1.3 including authorized extensions thereto, unless otherwise provided.

8.3 FORCE MAJEURE

8.3.1 Any delay or failure in the performance of the obligations (other than payment of money) under this Contract resulting from an event of "Force Majeure" shall not constitute a default or breach of contract.

8.3.2 The term "Force Majeure" shall be defined as follows: Any act or omission or event arising from causes beyond the reasonable control of the parties or their Subcontractors that delays or prevents the performance of any obligations under this Contract such as Acts of God; vandalism; fires; floods; unexpected weather conditions; interventions of public authorities; work stoppages; acts of third parties; changes in applicable laws or regulations which would prevent, or impair the accuracy and the reliability of the work conducted at the site.

8.3.3 Upon the occurrence of, or likelihood of the occurrence of, any event of Force Majeure, Contractor shall immediately, orally notify Owner of such event, followed by written notification thereof within ten (10) calendar days after the date Contractor discovered that the event of Force Majeure had occurred or is likely to occur. Such written notice as required under this provision shall include the reason(s) for an anticipated duration of delay and a proposal of measures to be taken by or at the direction of Contractor to prevent or minimize the delay and a proposed timetable of the implementation of such measures. Failure to notify Owner either orally or in writing in accordance with this provision shall constitute a waiver of such claim of Force Majeure, provided, however, that no modification of the work shall be made unless and until written notice is provided.

8.4 LIQUIDATED DAMAGES

8.4.1 The time in which the Contractor agrees to complete the work is of the essence of the Contract and failure to complete within the time specified will entitle the Owner to, and he will, deduct and retain out of monies which may be due to the Contractor under this Contract the sum of \$4,000.00 for each calendar day, including Sundays and Legal Holidays, of delay beyond the completion date stipulated in the Contract for use.

8.4.2 This sum shall not be considered as a penalty but as a sum mutually agreed upon as the ascertained damages suffered by the Owner because of delay in completion of the Work.

8.5 COMPENSATION FOR OWNER CAUSED DELAYS

8.5.1 If in the Contractor's opinion, he is delayed in the progress of the Work by the willful neglect or act of the Owner, the Contractor may submit claim in writing (Article 2, Subparagraphs 2.2.9, 2.2.10, 2.2.12) within 10 days of the occurrence of the delay, a request for extra compensation.

ARTICLE 9

PAYMENTS AND COMPLETION

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

9.2 APPLICATIONS FOR PAYMENT

9.2.1 At least ten (10) days before the date for each progress payment, the fifth of each calendar month that work is in progress, the Contractor shall submit to the CQA Manager an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner or the Engineer may require, and reflecting retainage, if any, as provided in the Subparagraph 9.4.6.

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

9.2.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing

materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3 CERTIFICATES FOR PAYMENT

9.3.1 The Engineer will, within seven (7) days after the receipt of the Contractor's invoice, either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Engineer determined appears to be properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.5.1.

9.3.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on his observations and the CQA Manager's documentation at the site and the data comprising the invoice, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, the issuing of a Certificate for Payment shall not thereby be interpreted to mean that the Engineer has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

9.4 PROGRESS PAYMENTS

9.4.1 After the Engineer has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days after initial receipt of the invoice.

9.4.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-tier-subcontractors in a similar manner.,

9.4.3 The Engineer may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages to completion or the amounts applied for by the Contractor and the action taken thereon by the Engineer on account of Work done by such Subcontractor.

9.4.4 Neither the Owner nor the Engineer shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

9.4.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use of occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.4.6 In making partial payments, the Owner may include the proportionate amount of the Contractor's fee earned during the preceding month. However, there shall be retained 10% on estimated amounts until final payment and acceptance of the work; provided, however, that the Engineer may at any time after 50% of the Work has been completed, if he finds that satisfactory progress is being made, and with written consent of surety recommend to the Owner that the amount retained remain fixed, and that no further retainage from the remaining requisition be made.

9.5 PAYMENTS WITHHELD

9.5.1 The Engineer may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.3.2. If the Engineer is unable to make representations to the Owner as provided in Subparagraph 9.3.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.3.1. If the Contractor and the Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for payment for the amount for which he is able to make such representations to the Owner. The Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

1. defective work not remedied,
2. third party claims filed or reasonable evidence indicating probable filing of such claims,

3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the contract sum,
5. damage to the Owner or another contractor,
6. reasonable evidence that the work will not be completed within the Contract time or
7. persistent failure to carry out the work in accordance with the Contract Documents.

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

9.6 FAILURE OF PAYMENT

9.6.1 If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's invoice, or if the Owner does not pay the Contractor within thirty (30) days after the date of receipt of said invoice, then the Contractor may, upon ten (10) additional days' written notice to the Owner and the Engineer, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate change Order in accordance with Paragraph 12.3.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Engineer, on the basis of an inspection, determined that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.7.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Engineer, the Owner shall make payment, if any, for such Work or portion thereof, as provided in the Contract Documents. Except as stated in Subparagraph 9.4.6, retainage will not be adjusted until all Work is completed and close-out documents are delivered to and accepted by the Owner.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.8.2 have been fulfilled.

9.8.2 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and

identified by the Contractor as unsettled at the time of the final Application for Payment. No conditional release shall be accepted.

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

1. unsettled liens,
2. faulty or defective work appearing after Substantial Completion,
3. failure of the work to comply with the requirements of the Contract Documents,
or
4. terms of any special warranties required by the Contract Documents.

9.8.4 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. The Contractor's Affidavit of Release of Liens (G706A), Payment of Debts and Claims (G706) shall

be submitted to the Engineer, in duplicate, on AIA Forms G-706, G706A and G707, latest editions. (4) the Owner shall not release final payment to the Contractor until the Contractor has submitted to the Owner, in a form acceptable to the Owner, a fully-executed release of liens from EACH Subcontractor and supplier of labor and materials of a value of \$2,000 or more. A release shall be deemed in proper form and properly executed if it contains the language found in Sample R/L (Figure 9-1) and it is executed by the president or vice-president of the releasor and witnessed by the Secretary, Assistant Secretary, or Treasurer of the releasor with a corporate seal affixed thereto. A partnership release shall be executed by all general partners. In the case of a sole proprietor it shall be sufficient for the proprietor to sign as John Doe d/b/a John Doe Enterprise. (5) The Owner shall also require that the Contractor provide a notarized Certificate listing all Subcontractors and suppliers of labor and material from whom a release of liens is required under this Section and certifying that the release of liens are complete.

9.8.5 Owner shall not release final payment to the Contractor until the Contractor has submitted a release of liens from each Subcontractor and supplier of labor and materials as required under 9.8.4 in a form substantially similar to the form shown in Figure 9-1.

9.8.6 In addition the Owner shall not release final payment to the Contractor until the Contractor has submitted to the Engineer of the Owner the negatives of the construction photographs, Subparagraph 4.17, the Maintenance and Operation Manuals, Subparagraph 4.9.2, the record set of Drawings, shop drawings, Specifications, and the reproducible drawings, Subparagraph 4.9.3.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1.1 Safe practices are considered a priority requirement in the performance of this Contract. Contractor shall, to the maximum extent practicable, be responsible for the conditions of the work site. This responsibility will encompass the safety of all persons, including employees, agents, Subcontractors and lower-tier Subcontractors, as well as the property for the duration of the services performed hereunder. Contractor shall comply with all the applicable Federal, State and Local Health and Safety requirements and standards including, but not limited to, Occupational Safety and Health Act of 1970, as amended, and the standards and regulations issued thereunder. Contractor shall develop and maintain of the duration of this Contract, a

Figure 9-1

SUBCONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

_____(THE CLIENT)
_____(WESTON)
_____(SUBCONTRACTOR)

Amount Paid _____

Upon receipt of payments made as shown above, _____(Subcontractor), does release and forever discharge WESTON, its sureties and the Client from any and all actions, causes of action, liens, bond rights, stop notices, debts, dues, accounts, covenants, agreements, judgments, claims and demands of whatsoever nature or character which said _____(Subcontractor), now has or ever has had against WESTON or its Sureties or the Client, their successors and assigns, which shall have arisen or may arise out of or be incidental to work undertaken or done under or in connection with WESTON/CLIENT Contract No. _____.

_____, (Subcontractor), certifies and warrants that all charges for labor, materials, supplies, equipment, lands, licenses and other expenses for which WESTON or the Client might be sued or for which a lien, stop notice, or bond claim might be filed, have been fully satisfied and paid and _____(Subcontractor), agrees to defend and save harmless WESTON and the Client from and against all suits, actions, claims, liens or demands of laborers, mechanics, materialmen or others, filed against WESTON or the Client or the buildings, structures, additions or improvements constructed under WESTON's contract with the Client and arising out of the project.

IN WITNESS WHEREOF, _____, (Subcontractor), has executed this receipt, release, waiver of lien and final discharge on the _____ day of _____, 19 _____.

Subcontractor's Name

Witness or Attest:

By: _____
(Typed or Printed) _____

By: _____

health and safety program that will effectively incorporate and implement all required safety provisions including, but not limited to, provisions of the Site Safety Plan.

**ARTICLE 11
INSURANCE**

11.1.1 Contractor agrees to maintain at its own expense, Worker's Compensation, Commercial General Liability, Automobile Liability, and Professional Liability insurances as follows:

<u>Types of Insurance</u>	<u>Limits of Liability</u>
Worker's Compensation Employer's Liability	Statutory Worker's Compensation \$1,000,000 Employer's Liability
Commercial General Liability	\$1,000,000 each occurrence
Automobile Liability Combined Bodily Injury and Property Damage	\$1,000,000 each accident or loss All vehicles covered Hired cars and non-owned autos
Professional Liability (Errors and Omissions)	\$1,000,000 per single claim/aggregate
Excess Liability (Umbrella Form)	\$1,000,000

Owner shall be named as an Additional Insured under such policies and the policies shall not be altered or canceled without Contractor first providing notice to Owner of its intent to alter or cancel. Failure to maintain insurance in compliance with this article shall be considered a breach of Contractor's obligations hereunder and shall be cause for Termination under Article 14.1 of this Contract. Contractor shall furnish appropriate insurance certificates to Owner and is not authorized to proceed with any work until the applicable insurance certificate(s) has (have) been received and accepted by Owner.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Owner and the Engineer, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract sum or the contract time. The contract Sum and the Contract time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract sum or the contract time.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the work to be performed hereunder. If any such change causes an increase in Contractor's cost and/or increase to the time required for or the nature of performance of the agreement, Contractor shall so notify Owner within five (5) days of receipt of the Change order notification and an equitable adjustment in compensation shall be made through a Change Order or modification signed by both Contractor and Owner.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and

generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract sum shall be equitably adjusted by Change Order upon claim by either party made within twenty (20) days after the first observance of the conditions.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Engineer written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract sum or an extension of the Contract time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the work has been covered which the Engineer has not specifically requested to observe prior to being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall within twenty (20) days cure all Work rejected by the Engineer as defective or as failing to conform to other Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The

Contractor shall bear all costs of correcting such rejected work, including compensation of the Engineer's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

1. The Contractor guarantees all work required by the Contract Documents, with approved modifications, as follows:

1. Against faulty or imperfect material or workmanship.
2. The work shall be entirely watertight and leakproof.
3. The mechanical and electrical machines, devices and equipment shall operate satisfactory with ordinary care, and shall perform their specified or intended functions.

2. The Contractor shall replace, correct, or repair work found to be improper, imperfect, not watertight and leakproof, or which does not operate satisfactory or perform as specified, at no expense to the Owner.

3. In the event corrective work is required, the Contractor shall make good all damage to other work caused by corrective measures.

4. The guarantee shall cover a period of one year from the date of Substantial Completion.

5. Neither final payment nor any provision of the Contract Documents shall relieve the Contractor of his responsibilities under this guarantee.

6. If at any time deficiencies in the work are discovered which result from a deliberate attempt to defraud the Owner, the Contractor will be held liable for replacement or correction, regardless of the time on the guarantee.

7. Extended guarantees - See Sections in Specifications. In addition to the general guaranty required herein extended guarantees, including but not limited to those listed below, are required for certain parts of the work. The first year of each extended guarantee period shall run concurrently with the one year general guarantee. All guarantees shall begin with the date of Substantial Completion.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.3.2, 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.3.2 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.3.

13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time fixed by written notice from the Engineer, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such work at auction or at private sale and shall account of the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Engineer's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne the difference shall be charged to the Contractor and an appropriate Change order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with a respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the

Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, not to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct this Work.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION FOR DEFAULT

14.1.1 If the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, or if the work should be stopped for a period of thirty days by the Contractor because the Engineer has not issued a Certificate for Payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.1.2 Either party may terminate this Contract upon fifteen (15) calendar days' written notice (Notice of Imminent Default) in the event of the other party's substantial failure to perform in accordance with the terms hereof, including, but not limited to, violation of any laws or regulations of any public body having jurisdiction over this project, or if an appropriate governmental entity does not provide, or withdraws approval to perform the Work. Such written notice shall include a description of the conditions constituting breach of the Contract and provide the Breaching Party a period of time not less than five (5) days and not more than twenty (20) days within which to correct such conditions. For purposes of this Article "days" means business days. In the event that the Breaching Party does not correct such conditions contained in the Notice of Imminent Default within the designated period of time, the Terminating Party may issue a Declaration of Default and terminate the Contract.

14.2 OWNER'S RIGHT TO CARRY OUT THE WORK

14.2.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven (7) days follow receipt by the Contractor or any additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation of the Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of

the Engineer. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

14.3 TERMINATION FOR CONVENIENCE BY THE OWNER

14.3.1 In addition to the termination rights specified above, Owner may terminate this Contract in whole or in part at any time by fifteen (15) calendar days' written notice to Contractor. Such termination shall be effective in the manner specified in the notice, shall be without prejudice to any claims which one party may have against the other, and shall be subject to the other provisions of this Contract.

On receipt of any termination notice, Contractor shall, except as and to the extent directed, immediately discontinue the work and the placing of orders for services, materials, facilities, and supplies in connection with the performance of the existing subcontracts upon the most satisfactory terms available to Owner. Thereafter, Contractor shall perform only such services as may be necessary to preserve and protect the work already in progress as authorized by Owner and to dispose of any property as requested by the Owner. Contractor shall cooperate fully with any transfer of responsibility of the work to any other person.

A complete settlement of all claims of Contractor upon termination of the Contract, as provided above, shall be made as follows: (a) Owner shall assume and become liable for all good faith obligations and commitments that Contractor may have undertaken or incurred in connection with the work which have not been included in prior payments; (b) Owner shall compensate Contractor of the reasonably incurred actual costs of terminating existing subcontracts and preserving,

protecting or disposing of property and performing any other necessary services after the notice of termination has been received; and (c) Owner shall pay Contractor for all work performed, prior to the date of termination, in accordance with this Contract.

Notwithstanding the above, nothing in this Contract shall limit, waive or terminate the indemnity obligations of the parties under this Contract regarding any matters resulting from or arising out of anything that occurred during the terms of this contract, including termination of this Contract.

14.3.2 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty or a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Engineer that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to received any further payment until the Work is finished.

14.3.3 If the unpaid balance of the Contract sum exceeds the costs of finishing the Work, including compensation for the Engineer's additional services made necessary thereby, such excess shall be paid to the contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Engineer, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract.