##### TABLE OF CONTENTS

1. General
2. Authorized Releases
3. Project Schedule and Time for Completion
4. Compensation
5. Changes
6. Plans and Specifications Furnished by Buyer
7. Interpretation of Plans and Specifications
8. Contractor Safety Program
9. Compliance Requirement and Material Safety
10. Asbestos Notification
11. Obstructions
12. Site Investigation & Conditions Affecting the Work
13. Changed Conditions
14. Errors Or Discrepancies Noted by Contractor
15. Utilities
16. Labor, Materials, and Equipment
17. Supervision and Superintendence
18. Shop Drawings
19. Subcontracting
20. Cleanup
21. Salvage Materials
22. Codes and Standards
23. Compliance with Laws, Regulations, and Ordinances
24. Permits and Licenses
25. Preservation of Property
26. Mutual Responsibility of Contractor
27. Emergencies
28. Bonds
29. Insurance Requirements
30. Indemnity
31. Warranty of Title
32. Quality Control, Inspection, and Acceptance
33. Contractor's Responsibility for the Work
34. Use of Completed Portions
35. Substantial Completion
36. Final Acceptance of Work
37. As-Built Data
38. Payments to Contractors
39. Audits
40. Limitation of Payments
41. Limitation of Obligation
42. Liens
43. Termination of Contract
44. Suspension
45. Warranty
46. Force Majeure
47. Modification and Waiver
48. Security
49. Labor Disputes
50. Confidentiality
51. Independent Contractor
52. Disputes
53. Third Party Claims
54. Lands and Rights-of-Way
55. Notice and Service Thereof
56. Waiver of Rights
57. Property Rights In Materials
58. Archaeological Artifacts
59. Attorneys' Fees
60. Headings
61. Remedies
62. Severability
63. Survival
64. Assignment
65. Controlling Law
66. Order of Precedence
67. Contract Renewal
68. Entire Contract
69. Construction

**If Applicable**

Schedule A. Statement of Work

Schedule B. List of Drawings and Specifications

Schedule C. Contract Data Requirements

Schedule D. Bonds

Schedule E. Excavation Process

Schedule F. Project Schedule

Schedule G. Rates/Reimbursables

Schedule I. Division Cost Breakdown Sheet

#### **TIME & MATERIAL GENERAL PROVISIONS**

This Time and Material Contract (the “Contract”) is made by and between Northrop Grumman Systems Corporation, acting through Northrop Grumman Information Systems Sector, (Enter Division), located at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ known as “Buyer” and General Contractor known as “Contractor”.

**1. GENERAL**

Contractor agrees, as an independent contractor and not as an agent of Buyer, to furnish the labor, material, tools and equipment on an as-required basis, at the rates specified in the Rates/Reimbursables, Schedule G attached hereto and made part hereof by this reference as though set forth in full, during the period designated on the Purchase Order to perform the work or provide the services (the “Work”) as specified the Statement of Work Schedule A, as may from time to time be requested pursuant to the provisions of Article 2, Authorized Releases. Such Work is to be performed on Buyer's premises/facilities (the “Worksite”). The total value of this Contract shall not exceed the amount specified on the Purchase Order which includes any applicable material, travel, and other direct costs (“ODCs”).

**2. AUTHORIZED RELEASES**

The Work to be performed will be specified from time to time by releases issued against this Contract (the “Release” or “Releases”) by Buyer's personnel authorized to request such Work and to issue such Releases (the “Authorized Releaser” or "Authorized Releasers"). The Work shall be authorized on a not-to-exceed (“NTE”) time and material basis (the “Release Price”).

Following receipt by Contractor of a Release requesting Work but prior to commencement of such Work, Contractor will submit for review and approval of the Authorized a NTE time and material estimate in compliance with the terms of the Release to accomplish the Work. This proposal/estimate shall include labor man-hours, material cost, and the cost for each trade and classifications.

Buyer personnel authorized to request services and to approve charges against this Contract are stated on the Purchase Order. Such authorization may be changed from time to time at Buyer's option with any such changes being confirmed to Contractor in writing by a contract change notice (“CNN”) pursuant to Article 5, Changes. Contractor shall not accept Releases, which do not fully comply with the terms of this Contract and the Schedules hereto. Contractor's performance of the Work in response to Buyer's personnel not identified as Authorized Releasers shall be at Contractor's own risk and sole expense, and Buyer shall not be deemed as having incurred any charges, costs or expenses as a result thereof.

All Releases issued by the Authorized Releasers will be in writing and subject to the terms and conditions of this Contract and the Schedules hereto. Individual Releases shall not exceed a total of Twenty-Five Thousand and 00/100 Dollars ($25,000.00) per Release unless specific written confirmation is given and approved by the Manager of Contracts Administration and the Buyer’s Manager of Construction and Engineering.

**3. PROJECT SCHEDULE AND TIME FOR COMPLETION**

A. Time is of the essence in this Contract. Performance by Contractor according to the schedule of each Release is a major condition of this Contract.

B. If required by the Authorized Releaser, Contractor shall within five (5) working days after receipt of Construction Blanket Agreement Release Form (ISF P23) prepare and submit to the Authorized Releaser for approval a project schedule showing the order in which Contractor proposes to accomplish the Work, the date on which it will start the activities (including procurement of materials, plant and equipment), and the scheduled dates for completing same (the “Project Schedule”). The Project Schedule shall be presented on a chart of suitable scale to indicate approximately the percentage of Work, and the cost thereof, scheduled for completion at any point in time. Contractor shall enter on the chart the actual progress at such intervals as directed by Buyer, and shall immediately deliver three (3) copies thereof to the Authorized Releaser. If Contractor fails to submit a Project Schedule as herein prescribed, Buyer may withhold payments until such time as Contractor submits the required Project Schedule.

C. Contractor shall proceed expeditiously with adequate force and shall complete the Work within the Project Schedule. If, in the opinion of the Authorized Releaser, Contractor falls behind schedule, Contractor shall increase the number of shifts, overtime operations, days of work or the amount of construction facilities, or all of them, and submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to Buyer.

D. Failure of Contractor to perform any covenant or condition contained in this Contract and the Schedules hereto within the time period specified shall constitute a material breach of this Contract entitling Buyer to terminate the Contract for cause unless Contractor applies for and receives an extension of time pursuant to Article 46, Force Majeure or Article 5, Changes.

E. Buyer's agreement to waive a specific work item or to extend the time for performance of any particular work item shall not constitute a waiver of any other time provisions contained in this Contract. Failure of Contractor to complete performance promptly within any additional time authorized in a waiver or extension of time agreement shall constitute a material breach of this Contract entitling Buyer to terminate for cause.

**4. COMPENSATION**

### A. Time and Material Releases

1) Labor and Overhead Charges

Contractor shall be compensated for Work performed on a NTE time and material basis in accordance with the labor rates, overhead, general and administrative expense, and profit set forth in Schedule A attached hereto. Such rates shall be applied to the actual man-hours, and fractions thereof, worked as reflected on Contractor's approved time record forms.

2) Material Charges

Buyer reserves the right at all times, upon three (3) calendar day notice to Contractor, to furnish any or all materials required. However, when authorized to furnish the required materials hereunder, Contractor shall document charges to Buyer in accordance with the following:

1. Direct material shall be charged at cost with cash discount deducted. No material handling charges will be allowed, unless specifically authorized herein. Items drawn from Contractor's stock shall be priced at the then prevailing rate less any discounts to which Buyer is entitled.
2. The Contractor shall support all direct material costs claimed by submitting copies of paid invoices or storeroom requisitions.
3. Direct materials are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product.
4. The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory material; take all cash and trade discounts, rebates, allowances, credits, salvage, and commissions; and when unable to take advantage of such benefits, shall promptly notify the Buyer to that effect and the reason therefore. Credit shall be given to the Buyer for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, and commissions which have accrued for the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor or lost through fault of Buyer shall not be deducted from gross costs. If requested by Buyer, Contractor shall, prior to final payment hereunder, execute and deliver to Buyer an assignment of all rebates, credits and allowance arising under this Paragraph d.
5. When the nature of the Work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material notwithstanding Paragraph a above, shall be on the basis of an established catalog or list price in effect when the material is furnished, less all applicable discounts to the Buyer; provided that in no event shall such price be in excess of the Contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.
6. Title to all property furnished by the Buyer shall remain in the Buyer. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Buyer upon delivery of such property by the vendor. Title to other property shall pass to and vest in the Buyer upon (1) issuance of Release, (2) commencement of processing or use of such property in the performance of this Contract or (3) reimbursement of the cost thereof by the Buyer in whole or in part, whichever first occurs. All Buyer-furnished property together with all property acquired by the Contractor, title to which vests in the Buyer under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Buyer's Property". Title to Buyer's Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Buyer nor shall such Buyer's Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

Contractor shall support all material costs claimed by submitting copies of paid invoices or storeroom requisitions.

### C. Overtime

Overtime charges shall be incurred only with the specific authorization of the Authorized Releaser. Overtime rates are allowable as set forth in Schedule A attached hereto for authorized Work performed under the following circumstances:

1) Man-hours expended in excess of forty (40) hours per week.

2) Man-hours expended on weekends/holidays.

Notwithstanding the foregoing, Contractor may work in excess of his standard workday and/or week without Buyer's authorization provided that there is no premium or overtime charge to Buyer for such work performed.

**5. CHANGES**

Buyer may at any time by written notice to Contractor make any change to the Work (“Contract Change Notice” or “CCN”) authorized pursuant to the provisions of Article 2, Authorized Releases, provided such changes are within the general scope of the Release and of this Contract and the Schedules hereto. Any increase or decrease in the Release Price resulting from such changes shall be determined by application of the labor rates, overhead, general and administrative expense, and profit set forth in Schedule A attached hereto. Any revisions to the Project Schedule resulting from such changes shall be negotiated to the mutual agreement of the parties. Contractor shall commence work on such change upon receipt in writing of (a) description of the change; (b) revised period of performance as agreed to by the parties; and (c) agreement by the parties on the amount of increase or decrease in the Release Price if applicable.

No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract and the Schedules hereto, and except as otherwise expressly provided for herein, no change may be made for extra work or material unless the same has been ordered or approved of in writing by the Authorized Releaser as set forth in Article 2, Authorized Releases.

**6. PLANS AND SPECIFICATIONS FURNISHED BY BUYER**

Buyer will furnish to Contractor, free of charge, one (1) reproducible and two (2) copies of specifications, plans, and drawings necessary for the execution of the Work. Contractor shall maintain on the site where the Work is to be performed (the “Worksite”) one set of drawings marked up neatly with red pen or pencil showing all changes that have occurred to the Work as a result of CCNs, field changes, field conditions, substitutions, etc. This set of drawings shall be made available to the Authorized Releaser for review and inspection at his request.

**7. INTERPRETATION OF PLANS AND SPECIFICATIONS**

Figured dimensions on drawings shall govern, but Work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large-scale details shall take precedence over smaller scale drawings as to shape and details of construction. In the event of any discrepancy between any drawings and the figures thereon, the figures shall be taken as correct. Specifications shall govern as to materials and workmanship. Drawings and specifications are intended to be fully complementary and to agree.

The specification calling for the higher quality material or workmanship shall prevail. Materials or Work described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. Requests for substitution of any specified materials or equipment shall be in accordance with Article 16, Labor, Materials, and Equipment.

**8. CONTRACTOR SAFETY PROGRAM**

Contractor shall establish and maintain a safety program and shall require each of its subcontractors to establish and maintain appropriate safety programs which shall comply with all applicable provisions of federal, state, and local safety laws to prevent accidents, injury, damage or loss to persons or property on, about or adjacent to the Worksite and shall comply with appropriate federal, state, and local record-keeping and training requirements. Contractor shall erect and properly maintain, at all times as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. All aspects of said program are auditable and enforceable by Buyer.

A. Hot Work Permit: Contractor agrees to comply with ISF P7847, General Safety and Environmental Rules for Contractors, as relevant (the “ISF P7847”).

B. Spray Painting. If spray painting is performed, Contractor shall obtain approval from the Authorized Releaser twenty-four (24) hours prior to such painting. The painting area must be well ventilated and completely sealed off with approved coverings. Any Visqueen used must be fire retardant. Contractor shall also comply with the requirements of ISF P7847, as relevant.

**9. COMPLIANCE REQUIREMENTS AND MATERIAL SAFETY**

A. Contractor agrees to submit to the Authorized Releaser for review and approval a Material Safety Data Sheet and to comply with the requirements of ISF P7847, in connection with its use of hazardous materials.

B. Neither the requirements of this clause nor any act or failure to act by Buyer shall relieve Contractor of any responsibility or liability for the safety of the public or Buyer, or Contractor or subcontractor personnel or property.

C. Contractor shall comply with all federal, state, and local safety, health and environmental regulations as set forth in ISF P7847, in connection with its Work hereunder.

D. Contractor shall comply with ISF P7847, with respect to hazardous materials, management and housekeeping.

E. Any emissions, discharges or waste generated by Contractor in the performance of this Contract and the Schedules hereto shall be the responsibility of Contractor. All environmental damage or other damage caused by non-compliance with this Article 9, applicable Buyer policies and procedures, federal, state or local laws, codes, ordinances or regulations, shall be remedied at Contractor's sole expense.

F. Contractor shall insert this Article 9, including this paragraph F, with appropriate changes in the designation of the parties, in subcontracts involving hazardous material at any tier (including purchase designations or purchase orders) under this Contract.

**10. ASBESTOS NOTIFICATION**

Contractor agrees to comply with the requirements of ISF P7847, in connection with Asbestos. Failure to comply with the requirements of ISF P7847, will constitute a material breach of this Contract subject to termination for cause.

**11. OBSTRUCTIONS**

Contractor shall remove and dispose of all structures, debris or other obstructions or any character necessary to accommodate the Work. Where such obstructions consist of improvements not required by law to be removed by the Buyer thereof, all such improvements shall, with the prior written consent of the Authorized Releaser, be removed, maintained, and permanently replaced by Contractor at Buyer's expense, except as otherwise specifically provided in this Contract or the Schedules hereto.

**12. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work. These conditions include but are not restricted to (a) those bearing upon the presence of toxic materials other than asbestos; (b) transportation, disposal, handling and storage of materials; (c) availability of labor, water, electric power, and roads, and uncertainties of weather, river stages, tides or similar conditions at the Worksite; and (d) the character of equipment and facilities needed prior to and during prosecution of the Work.

Contractor further acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as the information is ascertainable from an inspection of the Worksite, including evaluating all exploratory work done by Buyer as well as any drawings and specifications made a part of this Contract and the Schedules hereto. Any failure by Contractor to acquaint itself with the available information will not relieve it of responsibility for estimating properly the difficulty or cost of successfully performing the Work. Buyer assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of the information made available by Buyer.

Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and locations of the Work, and the general and local conditions, which can affect the Work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor of responsibility for successfully performing the Work without additional expense to Buyer. Buyer assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understandings or representations by Buyer are expressly stated in this Contract and the Schedules hereto.

Contractor shall promptly notify the Authorized Releaser in writing of any asbestos or other toxic materials discovered by Contractor to be present at the Worksite. Buyer shall at its discretion take whatever action is required by law then in effect to remedy the situation at no cost to Contractor.

**13. CHANGED CONDITIONS**

Contractor shall promptly, and before such conditions are disturbed, notify the Authorized Releaser in writing of: (a) subsurface or latent physical conditions at the Worksite differing materially from those indicated in this Contract and the Schedules hereto; (b) unknown physical conditions at the Worksite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the nature and character of Work provided for in this Contract and the Schedules hereto; or (c) the presence at the Worksite of asbestos or other toxic materials not previously identified by Buyer or by Contractor during the Site Investigation required pursuant to Article 12, Site Investigation and Conditions Affecting the Work. Buyer shall promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in Release Price shall be negotiated following submittal of Contractor's cost estimates presented in the form required by Article 5, Changes. Any claim of Contractor for adjustment hereunder shall not be allowed unless Contractor has given notice as required above.

**14. ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR**

It is Contractor's duty to promptly notify the Authorized Releaser in writing of any design, material or specified method that may prove defective or insufficient.

Similarly, if before commencing Work or during the course of the Work, Contractor finds any discrepancy between the specifications and the plans or between either of them and the physical conditions at the Worksite or finds any error or omission in any of the plans or in any survey, Contractor shall notify promptly the Authorized Releaser of such discrepancy, error or omission orally and in writing. If Contractor finds that any plans or specifications are at variance with any applicable law, ordinance, regulation, order or decree, Contractor shall promptly notify the Authorized Releaser in writing of such variance. The Authorized Releaser, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to Contractor. Until such instructions are given, any Work performed by Contractor after Contractor discovers or should have discovered such error, discrepancy, defect, insufficiency or conflict will be at Contractor's sole cost, expense and risk of liability.

If Contractor fails to promptly notify the Authorized Releaser as required by this Article 14, Contractor shall be deemed to have waived any right to assert at any later date in any legal or equitable proceeding against Buyer, or in any subsequent arbitration or settlement conference between Buyer and Contractor; (a) any defect or insufficiency in design, materials, or specified method; (b) any discrepancy between specifications, plans, and physical conditions at the Worksite; (c) any error or omission in any plans or any survey; or (d) any variance between plans or specifications and applicable law.

**15. UTILITIES**

Buyer shall have the responsibility for the timely removal, relocation, protection, and temporary maintenance of existing main or trunk line utility facilities that are not indicated in the plans and specifications with reasonable accuracy.

If it is necessary for Contractor to remove, relocate, protect or temporarily maintain a utility because of interference with the Work, work on any such utility shall be performed and paid for in the following manner:

When it is necessary to remove, relocate, protect or temporarily maintain an existing main or trunk line utility facility not indicated in the plans and specifications with reasonable accuracy, Buyer will compensate Contractor for the costs of (a) locating the utility facility; (b) repairing damage not due to the failure of Contractor to exercise reasonable care; and (c) removing, relocating, protecting or temporarily maintaining such utility facility and/or the equipment on the Worksite necessarily idled during such work. These costs shall be covered by a Change Order conforming to the provisions of Article 5, Changes. Buyer may make changes in the alignment and grade of the Work to obviate the need to remove, relocate, protect or temporarily maintain such utility facility or to reduce the costs of the work involved in removing, relocating, protecting or temporarily maintaining such utility facility. Changes in alignment and grade will also be ordered in accordance with Article 5, Changes.

A. Underground utilities known to exist are shown in their approximate locations only because exact locations are not known. Contractor shall excavate with utmost care so as not to cause damage or interruption of service. If any utility shown on the drawings is damaged as a result of any failure of Contractor or any subcontractor of any tier or any of their respective agents or employees to exercise utmost care, the same shall be repaired by Contractor at no cost to Buyer. If any existing utility requires relocation and such relocation is not specified in the Release, Buyer's Authorized Releaser will issue a CNN pursuant to Article 5, Changes, to provide for the relocation.

The right is reserved to governmental agencies and to Buyers of utilities to enter at any time upon any street, alley, right of way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

B. Subject to availability as determined by Buyer, Buyer will provide construction utilities as follows:

1) Electrical energy will be made available to Contractor from existing services at the voltage levels then available. Contractor shall determine the points at which service is available, the capacity and applicability of such service for his requirements, provide all temporary lines required, and remove same at completion. All connections shall be in conformance with all applicable codes. Contractor shall provide fused disconnect switches for all connections made to the existing service. All connections shall be subject to the prior approval of, and done under the supervision of, the Authorized Releaser. Where such connection can be made to existing metered services, energy used by Contractor in the Work under this Contract and the Schedules hereto will be supplied by Buyer at no cost to Contractor. Where electric service is not available, Contractor shall provide its own service at its sole expense. Contractor agrees to comply with ISF P7847, with regard to utility lines.

2) Water for construction purposes in quantities judged reasonable by the Authorized Releaser will be furnished by Buyer without cost to Contractor. Contractor shall, at its sole expense, make temporary connections to existing water lines as directed by the Authorized Releaser, including the installation of approved backflow prevention devices, and shall remove same upon completion of the Work. Drinking water, where available, shall be provided by sanitary drinking fountains. Where drinking water is not available, Contractor shall provide its own drinking water at its sole expense.

3) Contractor shall make its own arrangements for telephone services. Installation, service, and removal or any telephone service shall be at Contractor's sole expense.

4) Where available, the Authorized Releaser will assign toilet facilities in existing buildings for use by Contractor's workmen. Such facilities shall be used for toilet and sanitary purposes only and for no other purpose. Contractor shall be responsible for the proper use of such facilities. If the facilities are misused, Buyer may, at its sole discretion, withdraw permission to use such facilities. If facilities are not available in existing buildings, or if Buyer withdraws its permission granted hereunder, Contractor shall, at its sole expense, provide separate facilities that comply with all applicable state and local health and sanitation requirements and are approved by the Authorized Releaser.

C. If, at any time, Contractor requires the temporary shutoff of any utility (which term shall include all supply, disposal, distribution, and communication systems, and all similar facilities), Contractor shall give to the Authorized Releaser no less than three (3) business days written notice prior to the time Contractor requires the shutoff. All necessary utility outages and utility connections, including electrical, water, sewer, etc., must be coordinated with, and approved by, the Authorized Releaser. Contractor shall perform the Work requiring the shutoff only on such days and at such hours as directed and approved by the Authorized Releaser. Under no circumstance shall Contractor proceed with work affecting utilities without the prior written approval, including approval of shutoff schedule, of the Authorized Releaser. Regardless of the days or hours fixed by Buyer, no extra compensation will be paid for such work.

**16. LABOR, MATERIALS, AND EQUIPMENT**

A. Contractor will provide or cause to be provided competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by this Contract and the Schedules hereto. Contractor will at all times maintain good discipline and order at the Worksite. All persons assigned by Contractor to perform services hereunder shall be skilled in the type of work to which they are assigned. No person objected to by Buyer shall be assigned by Contractor to perform services hereunder, and upon receipt of a verbal request from Buyer for the replacement of any such person, Contractor shall forthwith remove such person from work, and as soon thereafter as reasonably possible, shall furnish a satisfactory replacement.

B. Contractor will provide, or cause to be provided, all materials, equipment, and supplies to be incorporated in the Work, which shall be new, unless otherwise specified in this Contract and the Schedules hereto. Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment to be incorporated in the Work.

C. All materials, equipment, and supplies shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in this Contract and the Schedules hereto. Contractor shall assemble and transmit to the Authorized Releaser three (3) complete copies in loose-leaf binders of all operating and maintenance data from all manufacturers whose equipment is installed in the Work. Contractor shall also prepare a checklist or schedule showing routine maintenance required to keep warranties valid, for each item of equipment, i.e., type of lubricants to be used, intervals between lubrication, part change out, etc.

Buyer reserves the sole right to determine the acceptability or equivalence of any requested substitution.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by this Contract and the Schedules hereto, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Buyer, if Contractor submits sufficient information to allow Buyer to determine that the substitute proposed is equivalent to that indicated or required by this Contract and the Schedules hereto.

Buyer will be allowed a reasonable time within which to evaluate each proposed substitute. Buyer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without Buyer's prior written acceptance, which will be evidenced in writing by either a CNN pursuant to Article 5, Changes, or an approved shop drawing. Buyer may require Contractor to furnish, at Contractor's sole expense, a special performance guarantee or other surety with respect to any substitute.

**17. SUPERVISION AND SUPERINTENDENCE**

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with this Contract and the Schedules hereto. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for assuring that the completed Work complies with the Contract and the Schedules hereto.

Contractor shall provide individual supervision for all projects Released pursuant to Article 2, Authorized Releases. It is recognized that not all Released projects require full time supervision. Accordingly, prior to the commencement of any Work, the parties will mutually agree upon the number of supervision man-hours required for each individual Release. In the case of firm fixed price Releases, the agreed upon number of supervision man-hours will be included in the fixed price agreed upon by the parties for each such Release. In the case of NTE time and material Releases, the agreed upon number of man-hours of supervision will be charged as allowable cost to each such Release and will be included in the NTE.

Contractor shall designate a competent superintendent satisfactory to Buyer who shall supervise the Worksite as set forth in the preceding paragraph (the “Superintendent”). When at the Worksite, the Superintendent shall have authority to act on behalf of Contractor. All written or oral communications given to the Superintendent shall be as binding as if given to Contractor. During periods when the Work is suspended, Contractor shall make appropriate arrangements for any emergency Work that may be required.

Contractor shall designate an individual(s) who will be available during off-hours in the event of an emergency, and shall post a sign(s) in a prominent location at the Worksite in large size print containing the name(s) and telephone number(s) by which such designated individual(s) may be contacted.

**18. SHOP DRAWINGS**

Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data, which are prepared by Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Work.

Contractor shall submit shop drawings to the Authorized Releaser for review when (a) shop drawings are called for by this Contract and the Schedules hereto; (b) when Contractor desires to perform the Work in a manner significantly different from the details shown in the Contract or the Schedules hereto; (c) when substitutions require rearrangement of portions of the Work; or (d) when shop drawings are requested by Buyer.

All shop drawings shall be accurately dimensioned and show all details necessary to define the Work completely.

Submittal shall be made with ample lead-time to avoid delay. Six (6) copies of each drawing shall be submitted initially, and one (1) of these will be returned with reasonable promptness showing the changes desired by Buyer. Contractor shall return to Buyer six (6) corrected copies. After review by Buyer, two (2) copies will be returned to Contractor. Contractor shall furnish any additional copies needed by its subcontractors or suppliers.

Review of shop drawings by Buyer is limited to general configuration and shall not relieve Contractor of responsibility for defects in design or other errors or omissions in such drawings nor from compliance with all the Contract requirements.

**19. SUBCONTRACTING**

Contractor will not employ any subcontractor (whether initially or as a substitute) against whom Buyer has objection and/or who appears on the “Excluded Parties Listing System (EPLS)”. It is the contractors’ responsibility to check the list of his subcontractors/suppliers against the EPLS. Access to the current EPLS may be found at the following website: [www.sam.gov](http://www.sam.gov). Contractor will submit to the Contract Administrator for review a list of the names of all proposed subcontractors. Buyer will notify Contractor in writing of any objection to any subcontractor on such list.

If Buyer refuses to accept any subcontractor on such list, Contractor will submit an acceptable substitute. Contractor shall not contract with a subcontractor to whom Buyer has objected.

Contractor will not make any substitution for any subcontractor unless Buyer determines that there is good cause for doing so and consents to such substitution in writing.

Nothing in this Contract and the Schedules hereto shall create any contractual relationship between any subcontractor and Buyer or any obligation on the part of Buyer to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law.

The divisions and sections of the specifications and the identifications of any drawing shall not control Contractor in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.

Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of this Contract and the Schedules hereto for the benefit of Buyer and shall require each subcontractor to enter into similar written agreements with its subcontractors. Contractor shall provide each and every of its subcontractors with copies of this Contract and the Schedules hereto which relate to the Work to be performed by the Subcontractor. Each such subcontract agreement shall preserve and protect the rights of Buyer under this Contract and the Schedules hereto with respect to Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice Buyer’s rights.

Contractor shall be responsible for the management of its own employees or subcontractors in the performance of the Work.

Buyer shall have the right of review and refusal of all bid packages, subcontract documents prior to submittal to bidders, and all subcontractor awards.

Each subcontract agreement for a portion of the Work is assigned by Contractor to Buyer, provided that such assignment is effective only after termination of the Contract by Buyer for cause pursuant to Article 43, Part A, Termination by Buyer for Cause, and only for those subcontract agreements which Buyer accepts by notifying Contractor and subcontractor in writing.

**20. CLEANUP**

At all times during the progress of the Work, Contractor shall keep the Worksite, including exit ways, rights-of-way, streets, and all other grounds and areas occupied by Contractor, clear of all refuse caused by Contractor's operations.

Upon completion of the Work and before requesting final acceptance of the Work, Contractor shall (a) perform a final cleaning of all rights-of-way, streets, borrow pits, and all other grounds occupied in connection with the Work; (b) remove all refuse, excess materials, temporary structures, tools and equipment; and (c) clean all parts of the Work, including, but not limited to windows, walls, ceilings, floors, fixtures, cabinet work, and equipment, in a manner so that the finished Work is clean and in new condition free of all marks, stains, fingerprints, and other soil or dirt. All surfaces shall be cleaned to the satisfaction of the Authorized Releaser.

Contractor shall provide its own refuse containers and be responsible for disposing of all refuse, hazardous materials, and waste in compliance with applicable federal, state, and local laws and ordinances.

In addition, Contractor shall, at its sole expense, replace any damaged or broken glass and shall clean and polish all glass installed in the Work.

If Contractor fails to clean the Worksite in accordance with this paragraph at the completion of the Work, Buyer may do so and the cost thereof shall be charged to Contractor.

**21. SALVAGE MATERIALS**

Except as otherwise specified by Buyer, all materials demolished and/or removed from the Work and not required to be delivered to Buyer shall become the property of Contractor. Contractor shall recycle to the fullest extent practical all demolished material and/or equipment, and provide documentation to the Buyer of types and quantities of material and/or equipment recycled. Contractor shall remove any non-recyclable material and equipment from the Worksite and dispose of it in a lawful manner. All materials required to be delivered to Buyer shall be done so in the manner specified by Buyer.

**22. CODES AND STANDARDS**

Material and workmanship specified by reference to codes, standards, specifications or tests shall, unless otherwise specified, comply with the latest revision of such codes, standards, specifications or tests in effect on the effective date of this Contract.

Tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the plans and specifications. Contractor shall furnish without charge such samples for testing as may be required by the Authorized Releaser.

**23. COMPLIANCE WITH LAWS, REGULATIONS, AND ORDINANCES**

In addition to the requirements set forth in Section 9.E. hereof, Contractor also shall provide continuous adequate protection of the Work, Buyer's property, and adjacent property, and shall take all necessary precautions to keep and maintain the Worksite free from recognized safety hazards the may cause death, illness or injury to persons or damage to property.

Contractor shall keep himself fully informed of all existing and future laws, ordinances, rules and regulations of any federal, state, county or local agencies or other authorities having any jurisdiction or authority over the Work which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work. Such laws, ordinances, rules and regulations include, but are not limited to those relating to wages, hours, working conditions, safety and health, the environment, social security, income taxes, withholding laws, workmen's and unemployment compensation laws, fire protection standards, building codes, and worksite laws.

Contractor shall at all times observe and comply with, and shall cause all its agents, employees, subcontractors, and suppliers to observe and comply with, all such existing and future laws, ordinances, rules and regulations.

The exercise of Buyer's right to conduct any construction review or to observe Contractor's performance shall not subject Buyer to any responsibility for Worksite safety and shall not be used as evidence of the adequacy of Contractor’s safety measures in, on or near the Worksite.

**24. PERMITS AND LICENSES**

Contractor shall (a) procure and pay for all permits, licenses, and inspections required by any governmental authority for any part of the Work; (b) furnish any bonds, security or deposits required to permit performance of the Work; and (c) give all notices necessary and incidental to the due and lawful prosecution of the Work.

**25. PRESERVATION OF PROPERTY**

Contractor shall exercise due care to avoid injury to existing improvements or facilities, utility facilities, adjacent property, trees, and shrubbery that are not to be removed.

Contractor shall provide and install suitable safeguards to protect all trees, shrubbery, and landscaping that is not to be removed. All pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, highway or street facilities, and any other improvements or facilities within or adjacent to the Work shall be protected from injury or damage by suitable Contractor-provided and installed safeguards. If such objects are injured or damaged by reason of Contractor's operation, they shall be replaced or restored at Contractor's sole expense to a condition as good as when Contractor entered upon the Worksite or as good as required by the plans and specifications if any objects are a part of the Work being performed, whichever is better.

In addition to any requirement imposed by law, Contractor shall shore up, brace, underpin, and protect as may be necessary all existing structures adjacent to and adjoining the Worksite which are in any way affected by the excavations or other operations connected with the performance of the Work. Whenever any notice is required to be given by Buyer or Contractor to any adjacent or adjoining land Buyer or other party before commencement of any Work, such notice shall be given by Contractor.

**26. MUTUAL RESPONSIBILITY OF CONTRACTOR**

Nothing in the Contract shall be interpreted as granting to Contractor exclusive occupancy of the Worksite. Contractor must ascertain to his own satisfaction the scope of the Work and the nature of any other contracts that have been or may be awarded by Buyer in the performance of the Work, and Contractor must perform this Contract with due consideration of such other contracts, if any.

Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Worksite. If the performance of any contract on the Worksite is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Authorized Releaser shall decide which contractor shall cease Work temporarily and which contractor shall continue, or whether the Work under the contracts can be coordinated so that the Contractors may proceed simultaneously. On all questions concerning conflicting interests of Contractors performing related Work, the decision of the Authorized Releaser shall be binding upon all contractors concerned and Buyer, the Authorized Releaser, and Buyer’s consultants, shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the project or caused by a decision or omission of the Authorized Releaser respecting the order of precedence in the performance of the contracts.

If through acts of neglect on the part of Contractor, any other contractor or any subcontractor shall suffer loss or damage on the Work, Contractor agrees to settle with such other contractor or subcontractor by written agreement. If such other contractor or subcontractor shall assert any claim against Buyer, the Authorized Releaser, Buyer’s consultants or any of their directors, officers, employees or agents on account of any damage alleged to have been so sustained, Buyer shall notify Contractor who shall take appropriate action in conformity with his duty under Article 30, Indemnity.

**27. EMERGENCIES**

In any emergency affecting the safety of persons or property, Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any increase in the Contract Price or extension of time claimed by Contractor on account of emergency Work shall be determined as provided in Article 5, Changes.

**28. BONDS**

If required by Buyer as indicated in the Notice of Bonding Requirements, Schedule G, Contractor shall secure bonds in the full amount of the individual release written by the surety company satisfactory to Buyer guaranteeing and conditioned for the full, complete, and faithful performance of this Contract by Contractor and for the payment of claims for labor performed, and for materials furnished in connection herewith, all in accordance with the terms of the bonds. The premium therefore shall be part of the Release Price. Such bonds shall be quoted separately to Buyer. Contractor agrees to sign the required application and to furnish a financial statement and such financial guarantees as are necessary to secure said bonds.

If a bond is required, it shall be delivered to Buyer in recordable form upon Buyer’s request. Buyer shall also have the right to require that Contractor furnish bonds at any time after execution of the Contract, and after work has commenced on the project, on five (5) days written notice to Contractor. If Buyer demands such bonds after execution of the Contract, Buyer shall pay the bond premiums; however, Buyer shall not be required to reimburse Contractor for bond premiums in excess of the prevailing rate for premiums on bonds of the type given, without regard to Contractor’s financial ability, or one and one half (1 ½) percent of the penal amount of the bond in question, whichever is less.

If Contractor is unable to furnish satisfactory bonds, this Contract may be terminated for default, at Buyer's sole discretion, in accordance with Article 43, Part A, Termination by Buyer for Cause.

**29. INSURANCE REQUIREMENTS**

### A. General

Contractor shall not commence or continue to perform any Work unless, at its own expense, Contractor has in full force and effect all insurance required by this Article 29. Contractor shall not permit any subcontractor to perform Work unless these insurance requirements have been complied with by each subcontractor.

### B. Contractor's Liability Insurance

1) Contractor shall purchase and maintain from a company or companies authorized to do business in the state in which the Work is located and acceptable to Buyer, the following Contractor’s Liability Insurance which shall protect Contractor, Buyer, and such other parties as Buyer may from time to time designate, from claims which may arise out of or result from Contractor’s operations under the Contract, by a subcontractor or lower-tier subcontractor of the Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:

a. Comprehensive General Liability including Operations and Premises Liability (including elevator liability), Independent Contractor's Protective Liability, Completed Operations and Product Liability (maintained in effect for a period of five (5) years after the date of final payment), Personal Injury Liability, and Contractual Liability and Broadform Property Damage Liability (including completed operation). Coverage shall be written on an occurrence basis in the amount of a combined single limit of not less than $2M each occurrence.

b. Buyer's Protective Liability for the benefit of Buyer in the amount of a combined single limits of not less than $5M each occurrence.

c. Workers' or Workmen's Compensation Insurance with Statutory Limits and in accordance with the law of the relevant state, including All States and Voluntary Compensation endorsement.

d. Employer's Liability Insurance with a limit of not less than $5M.

e. Comprehensive Automobile Liability Insurance including personal injury and property damage to cover owned automobiles, automobiles under long-term lease, hired automobiles, employer's non-ownership liability, medical payments and uninsured motorists in the amount of a combined single limit of not less than $5M.

2) All liability insurance required under this Contract shall name Buyer as an additional insured under the applicable policies.

3) Certificates of Insurance and amendatory riders or endorsements to Contractor's insurance policies, and copies of policies if requested, acceptable to Buyer shall be delivered by Contractor to the Contract Administrator prior to commencement of design and/or construction as applicable. The amendatory riders and endorsements shall indicate that, as respects the additional insured, there shall be severability of interests under such insurance policies for all coverages provided under the policies. These Certificates, riders or endorsements as well as insurance policies required by this Subparagraph B.3 shall clearly indicate the specific coverage (including the contractual liability for Contractor's obligations under Subparagraph B.1a hereof) and shall contain a provision that coverage will not be cancelled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to Buyer. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted by Contractor along with the application for final payment.

4) If Contractor fails to purchase or maintain, or fails to require to be purchased or maintained, the liability insurance specified by this paragraph B, this Contract may be terminated for default, at Buyer’s sole discretion, in accordance with Article 43, Part A, Termination by Buyer for Cause. Alternatively, Buyer may (but shall not be obligated to) purchase such insurance on Contractor's behalf and Contractor shall repay Buyer for any premiums paid therefore by Buyer.

### C. Property Insurance

1) Buyer shall purchase and maintain Builder's Risk property insurance covering the Work at the site for the full insurable value thereof. Property insurance shall include the interests of Buyer, Contractor, and the respective contractors and subcontractors in the Work. Buyer shall provide all-risk insurance for physical loss or damage, including theft, vandalism, and malicious mischief. Buyer agrees to include Contractor and appropriate subcontractors as insured under such policy to the extent of their interest in the Work and to furnish Contractor an insurance certificate evidencing same. Waivers of subrogation will be granted among all parties.

2) Buyer and Contractor waive all rights against each other and the contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph C or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by Buyer. Buyer or Contractor, as appropriate, shall require from contractors and subcontractors by appropriate written agreements, similar waivers each in favor of the other parties enumerated in this Paragraph C.

3) If Contractor fails to purchase or maintain, or fails to require to be purchased or maintained, the property insurance specified by this Paragraph C, this Contract may be terminated for default, at Buyer’s sole discretion, in accordance with Article 43, Part A, Termination by Buyer for Cause. Alternatively, Buyer may (but shall not be obligated to) purchase such insurance on Contractor's behalf and Contractor shall repay Buyer for any premiums paid therefore by Buyer.

**30. INDEMNITY**

Contractor shall totally indemnify, defend, protect, and hold harmless Buyer, and its consultants, and each of its directors, officers, agents, and employees (collectively, the “Indemnified Parties” each, an “Indemnified Party”) from and against all claims, damages, liens, losses, expenses, liabilities, and any other costs, including costs of defense and attorneys' fees. This covenant shall extend to all liabilities arising out of, or resulting from or in connection with the failure, neglect, or refusal of Contractor to faithfully perform the Work, and all of Contractor's obligations under the Contract, both on and off the Worksite, to the extent that the liability (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of Contractor or any of its subcontractors, or suppliers, or anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, regardless of whether or not such claims, damages, losses, expenses, liabilities or costs are caused in part by any act or omission (active, passive, or comparative negligence included), of an Indemnified Party. Buyer shall have the right at its own expense to join in the defense of any action in which it is made a defendant.

In any and all claims against the Indemnified Parties by any employee of Contractor, or any of its subcontractors, or suppliers, or anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under the first paragraph of this Article 30 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor, or any subcontractor, or any supplier or other persons under workers' compensation acts, disability benefit acts or other employee benefit acts.

**31. WARRANTY OF TITLE**

No materials, supplies or equipment for the Work under this Contract and the Schedules hereto shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work. All such property or acquired items shall become the property of Buyer immediately upon its arrival at the Worksite and acceptance by the Authorized Releaser, unless Buyer directs otherwise at the time of purchase authorization. Contractor agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by Contractor, to Buyer free from any claims, liens, encumbrances, charges or security interests in favor of Contractor, any subcontractors or suppliers, or other persons or entities making a claim, whether by reason of having provided labor, materials, or equipment relating to the Work or by any reason unrelated to the Work. The covenant provided by this Article 31 shall not preclude Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title to which is commonly retained by the utility company or the municipality.

**32. QUALITY CONTROL, INSPECTION, AND ACCEPTANCE**

Contractor shall (a) develop and submit to the Authorized Releaser a quality control plan in accordance with Buyer's requirements; (b) maintain an adequate inspection system and perform such inspections as will assure that the Work will be free from defects and otherwise conform to this Contract and the Schedules hereto; and (c) maintain and make available to Buyer adequate records of such inspections.

Contractor shall (a) be responsible for notifying the appropriate city, county or other inspection agency whenever the Work has advanced to the point at which an inspection is required under this Contract or any applicable law or ordinance; (b) have the Work ready for inspection upon the arrival of such inspectors; and (c) notify Buyer in advance, when possible, of their arrival.

All materials and workmanship, including that of any subcontractors or suppliers, shall be subject to inspection and test by Buyer at all reasonable times and places, including the period of manufacture or performance. If an inspection reveals that any part of the Work must be changed or modified in any way to either meet the Contract requirements or to meet the requirements of the applicable inspection agency, Contractor shall immediately notify the Authorized Releaser and Buyer and Contractor shall mutually agree upon the action to be taken to bring the Work in compliance with the Contract requirements or the requirements of the applicable inspection agency.

Neither the presence nor absence of an inspector, nor any inspection or test performed, nor any failure to discover defective or nonconforming Work shall relieve Contractor of any Contract requirement.

Contractor shall, at no cost to Buyer, promptly and satisfactorily replace any material and correct any workmanship rejected by Buyer or otherwise not in conformity with the Contract requirements, whether observed before or after the Work is substantially complete and whether or not fabricated or installed, unless Buyer consents in writing to accept such material or workmanship with an appropriate adjustment in the Release Price, in which event the Release shall be modified in writing accordingly. Contractor shall promptly segregate and remove rejected material from the Worksite. Contractor shall bear the costs of correcting such rejected or nonconforming work, including additional testing and inspections and compensation for the Buyer’s services and expenses made necessary thereby, including, without limitation, correcting destroyed or damaged construction, whether completed or partially completed, of the Buyer or separate contractors caused by Contractor’s correction or removal of such work.

If Contractor does not promptly and satisfactorily replace rejected material or correct rejected workmanship, Buyer may (a) by Contractor or otherwise, replace such material or correct such workmanship and charge the cost thereof to Contractor; or (b) terminate for cause Contractor's right to proceed in accordance with Article 43, Part A, Termination by Buyer for Cause.

Contractor shall furnish all facilities reasonably needed for any inspection and test as may be performed by Buyer. All inspections and tests by Buyer shall be performed by Buyer. All inspections and tests by Buyer shall be performed in such manner as to not unnecessarily delay the Work. Contractor shall be charged with any additional cost of inspection if the Work is not ready/acceptable for inspection at the time specified by Contractor. If a portion of the Work is covered contrary to the Buyer’s request or to Requirements Specifications expressed in the Contract Requirements, it must. if required by Buyer, be uncovered for Buyer’s inspection and be replaced at Contractor’s sole expense without change in the Project Schedule.

If it is considered necessary by the Authorized Releaser at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, Contractor shall, upon request, promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, Contractor shall be responsible for all expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract Price to compensate Contractor for the additional Work involved in such examination and reconstruction; and, if completion of the Work has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of the Project Schedule and the Release shall be modified in writing accordingly. If the Authorized Releaser prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case, a CCN will be issued to reflect an appropriate reduction in the Release Price.

Contractor's obligations hereunder shall be in addition to and not in limitation of any obligations imposed upon it by any guarantees or warranties required by this Contract and the Schedules hereto or otherwise prescribed by law.

**33. CONTRACTOR'S RESPONSIBILITY FOR THE WORK**

Until the acceptance of the Work, Contractor shall have the responsible charge and care of the Work and of the materials to be used therein (including materials for which Contractor has received partial payment or materials which have been furnished by Buyer) and shall bear the risk of injury, loss or damage to any part thereof not otherwise covered by insurance or property losses up to the standard $25,000.00 under BUYER’s property insurance program.

**34. USE OF COMPLETED PORTIONS**

When the Work or any part thereof is sufficiently complete so that Buyer can utilize or place it into service, Buyer has the right to utilize such portions of the Work and to place the operable portions into service and to operate same upon giving written notification to Contractor.

Upon receipt of said notice and commencement of utilization or operation by Buyer, Contractor shall be relieved of its duty to maintain the affected portions of the Work; provided, however, that nothing in this Article 34 shall be construed as relieving Contractor from his complete responsibility to complete the Work in its entirety, correct defective Work and materials, protect the Work from damage, and otherwise discharge all duties undertaken by him pursuant to this Contract and the Schedules hereto. Action by Buyer pursuant to this Article 34 shall not be deemed to constitute completion and acceptance, and such action shall not relieve Contractor, his sureties, or insurers from the provisions of Article 29, Insurance Requirements, Article 30, Indemnity, Article 45, Warranty.

**35. SUBSTANTIAL COMPLETION**

The date of substantial completion of the Work or a designated portion thereof is the date when (a) construction is sufficiently complete in accordance with the Drawings and Specifications so Buyer may occupy or utilize the Work or designated portion thereof for the full use and benefit for which it is intended; and (b) Contractor has delivered to Buyer a Certificate of Beneficial Occupancy (collectively, the “Substantial Completion Date”). Notwithstanding the foregoing, if Contractor is unable to obtain a Certificate of Beneficial Occupancy due to Buyer's action or failure to act, the Substantial Completion Date shall not be affected thereby. The Substantial Completion Date shall be established by a Certificate of Substantial Completion signed by Buyer and Contractor which shall state their respective responsibilities for security, maintenance, heat, utilities, damage to the Work, and insurance. This Certificate of Substantial Completion shall also list the items to be completed or corrected and fix the time for their completion and correction (the “Punch List”). Failure to include an item on the Punch List does not alter or waive the responsibility of the Contractor to complete all Work in accordance with this Contract and the Schedules hereto.

Except as provided in the Punch List, Contractor shall thereafter have no further responsibility for the care or maintenance of the portion or portions of the Work so used and occupied or for loss of or damage to such portion or portions of the Work due to ordinary wear and tear, except for loss or damage thereto due to negligent acts or omissions of Contractor, its employees, agents, consultants, subcontractors or suppliers, for which Contractor shall remain responsible after the Substantial Completion Date and that part of the Work shall be deemed accepted by the Authorized Releaser except with respect to items or Work indicated on the Punch List.

If Contractor is delayed at any time in the progress of the Work by any act of neglect of Buyer or by any separate contractor employed by Buyer, or by changes ordered in the Work, or by conditions of force majeure as defined in 46, or any causes beyond Contractor's control, then the Substantial Completion Date shall be extended by Contract Change Notice for the period of time caused by such delay. Any such delay shall be identified in writing at the time the delay is noted with an anticipated schedule impact statement.

**36. FINAL ACCEPTANCE OF WORK**

Upon completion, correction or repair of all Punch List Items, the Authorized Releaser and Contractor shall make a further inspection of the Work (except those portions thereof previously accepted by the Authorized Releaser), and unless the Authorized Releaser, in the exercise of reasonable judgment, determines that a portion of the Work has yet to be completed and notifies Contractor in writing of such determination, stating his reasons therefore, not more than ten (10) business days after such inspection, the Authorized Releaser shall be deemed to have finally accepted the Work (the "Final Acceptance").

Unless otherwise provided in the Contract, Final Acceptance by Buyer shall be made as promptly as practicable after completion and inspection of all Work performed under this Contract. The Final Acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, and except as regards Buyer's rights under Article 45, Warranty, or under any other warranty or guarantee made or given in connection with this Contract.

Upon Final Acceptance of the Work by the Authorized Releaser, Contractor shall deliver to the Authorized Releaser a notebook containing all warranties and guarantees pertaining to all equipment incorporated into the Work. The warranty period set forth in Article 45, Warranty, shall terminate twelve (12) months after the date of Final Acceptance.

**37. AS-BUILT DATA**

Promptly upon completion of all Work, and as a condition precedent to Buyer making final payment to Contractor, Contractor shall deliver to the Authorized Releaser one complete set of as-built drawings marked up neatly in red pen or pencil accurately showing all changes in the Work.

In addition, Contractor shall deliver to the Authorized Releaser survey data indicating the location and elevation, to an accuracy of ±0.1 foot horizontally and vertically, of all underground utilities installed under this Contract or encountered by Contractor in performing the Work.

**38. PAYMENTS TO CONTRACTOR**

Contractor shall deliver to Buyer an itemized statement indicating the value of the Work performed, including the value of all material and equipment suitably stored at the Worksite or other approved location. Such statement will set forth the Contract number, and the individual percentages of completion of each part of the Work as required by Buyer under Article 3, Project Schedule and Time for Completion. Such statement shall also reflect allocation of cost to appropriate Facility Service Authorizations (“FSA”) as applicable. The amount due Contractor will be the total value of Work performed. Such statement may not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or supplier because of a dispute or other reason.

Buyer shall have the right to withhold payments from Contractor if any lien, stop notice or claim is served on and/or filed against Buyer in connection with the Contract until such liens have been released and recorded and a copy of the lien release with recording information stamped thereon has been provided to Buyer in accordance with Article 42, Liens. Before receipt of payment, Contractor shall sign and deliver to Buyer a Waiver and Release of Lien upon Progress Payment in form and content satisfactory to Buyer.

Buyer shall be entitled at all times to setoff any amount owing at any time from Contractor to Buyer or any of its affiliates, subsidiaries, successors or assigns against any amount owing at any time to Buyer or any of its affiliates, subsidiaries, successors or assigns from Contract, whether under this Contract, or any other agreement between Contractor and Buyer or any of its affiliates, subsidiaries, successors or assigns.

Buyer will pay the amount due within a reasonable period of time after receipt of a properly prepared statement from Contractor, provided the Work is in accordance with this Contract and the Schedules hereto, and has progressed to the point indicated on the statement. Payment by Buyer against any statement shall not be deemed to constitute an admission by Buyer that it has made on-site inspections of the Work, or that Buyer accepts any Work not in accordance with this Contract and the Schedules hereto.

Final payment of all outstanding amounts due Contractor (the “Final Payment”) shall be due and payable within a reasonable period of time after the Work has been accepted by Buyer as substantially complete in accordance with Article 35, Substantial Completion. Buyer’s setoff rights as set forth in this Article 38 shall survive Buyer’s payment of the Final Payment to Contractor. Notwithstanding the foregoing, Buyer hereby reserves the right to withhold monies necessary to cover claims made against Buyer, which are determined to be the result of acts or failure to act on the part of Contractor. If there should remain minor items to be completed, Contractor and Buyer shall place such items on the Punch List in accordance with Article 35, Substantial Completion.

Buyer may retain a sum equal to 150% of the estimated cost of completing any Punch List items, provided said unfinished items are likewise listed separately. Thereafter Buyer shall pay to Contractor the amount due for completed items.

Before issuance of Payment, Contractor shall submit:

A. Satisfactory evidence that all payroll, materials, bills for materials and equipment, and other indebted-ness connected with the Work have been paid or otherwise satisfied;

B. Consent of surety, if any, to final payment;

C. As-built drawings, and any warranty, instruction, maintenance manuals, or other documents specified in Articles 35, 36, 37 and 42;

D. Mechanics’ lien releases, stop notice releases, and bond right releases arising out of the Contract from all subcontractors, material suppliers, and Contractor. Such releases shall be signed, notarized and recorded and shall be unconditional for all previous payments, all in form and content as may be designated by Buyer; and

E. If required by Buyer, other data establishing payment or satisfaction of all such obligations, to the extent and in such form and content as may be designated by Buyer.

If any subcontractor or supplier refuses to furnish (within five (5) working days after receipt of a written demand therefore) a release required by Buyer under Paragraph 4 above, Contractor must furnish a Release of Lien bond satisfactory to Buyer to indemnify Buyer against any such lien. If Contractor fails to provide such bond, Buyer may (but shall not be obligated to) purchases said bond on Contractor’s behalf and deduct any premiums paid therefore by Buyer from any amounts owed but paid to Contractor if such obligation remains unsettled after all payments are made to Contractor by Buyer, Contractor shall refund to Buyer all monies Buyer may be compelled to pay in discharging such obligation, including all cost and reasonable attorneys’ fees.

The making of Final Payment shall constitute a waiver of all claims by Buyer except those arising from:

A. Unsettled liens;

B. Faulty or defective Work appearing after acceptance; or

C. The terms of any special warranties required by this Contract and Schedules hereto.

The acceptance of Final Payment shall constitute a waiver of all claims by Contractor except those previously made in writing and unsettled.

All invoices shall be mailed by Contractor to:

Northrop Grumman Financial Service Center

8710 Freeport Parkway Ste 200

Attn: Accts. Payable Dept.

Irvine, TX 75063-2577

All invoices or support documentation provided for work performed on a time and material basis therewith must contain the following information:

A. BUYER Facilities Contract Number and Facilities Service Authorization Number

B. Location of Work

C. Names of each Contractor employee

D. Supporting data to Item 3 above, as follows:

1) Week starting and ending dates

2) Hours worked (straight time and overtime)

3) Rates applied (straight time and overtime)

4) Total charges for the individual

E. Material charges supported as required herein

F. Invoice total

G. Invoice number and date

**39. AUDITS**

Contractor agrees that all books and records and plans, or such parts thereof as may be engaged in the performance of Work authorized by Releases on a time and material basis, shall at all reasonable times during the performance of the Work and up to twelve (12) months thereafter, be subject to inspection and audit by an authorized representative of Buyer to determine correctness of charges. Each payment theretofore made shall be subject to adjustment to the extent of charges, which are found by Buyer to be improper.

**40. LIMITATION OF PAYMENTS**

A. Contractor shall not exceed the total dollar amount authorized in this Contract and in each Release unless said dollar amount has been increased in writing by CCN.

B. Contractor shall not supply services for any period beyond that authorized in this Contract unless authorized by CCN. Buyer shall not be liable for services supplied beyond the period authorized.

C. Buyer shall not be obligated to pay Contractor any amount for work done by personnel in categories of labor not set forth in this Contract and the Schedules hereto.

**41. LIMITATION OF OBLIGATION**

Nothing contained herein shall be deemed or construed as obligating Buyer to order any of the services described herein, however, when and if services are ordered by Buyer hereunder such orders shall be subject to the terms and conditions of this Contract and the Schedules hereto.

**42. LIENS**

Contractor shall pay promptly, when due, all wages of laborers and employees and all bills for materials used in construction of the Work, together with all claims of any subcontractors or suppliers, and all statutory withholdings, and agrees to indemnify Buyer and hold it, the Worksite, and the Work harmless from and against any and all liens, including subcontractors' liens, and claims for labor, services, and materials, including stop notice claims, and agrees to forthwith discharge and pay any and all liens and claims. Should any such lien, claim or stop notice be so asserted, whether due to nonpayment of the claimant or otherwise, and whether contested or not, Contractor shall (a) pay such lien and obtain a Release of Lien within ten (10) days after receipt by Buyer of a copy of the recorded notice of lien; and (b) duly record such Release of Lien in the appropriate county real estate records and promptly provide to Buyer a copy of the recorded Release of Lien within five (5) working days thereafter. Failure to do so shall be deemed to be a material breach of the Contract and Buyer may at its sole discretion and without limiting or waiving any rights or remedies against Contractor or any subcontractor and supplier (1) pay the amount of any such lien, claim or stop notice either directly to the claimant or by issuance of joint payment to Contractor and the claimant; and/or (2) retain from any payments then due or which thereafter become due to the Contractor, whether under this Contract or otherwise, an amount sufficient to discharge the claimed amount and to hold Buyer harmless from any cost, expense, loss or damage incurred in connection with the claim, including reasonable attorneys’ fees. Further, Buyer may withhold payment from Contractor to the extent necessary to protect Buyer from loss due to (a) claims filed; (b) reasonable evidence indicating probable filing of claims; (c) failure of Contractor to make payments properly to subcontractors for material or labor; or (d) any reasonable doubt that the Contract can be completed for the balance then unpaid.

Contractor agrees to defend any action or arbitration against Buyer commenced by any person regarding any stop notice, mechanics’ lien or action to quiet title or for declaratory relief that is asserted in connection with the Work. Buyer may recover from Contractor all damages, costs, and expenses, including reasonable attorneys’ fees, incurred by Buyer in litigating any stop notice, mechanics’ lien or action to quiet title or for declaratory relief asserted in connection with the Work or in enforcing the provisions of this Article 42.

**43. TERMINATION OF CONTRACT**

A. Termination by Buyer For Cause. If:

1) a petition under the bankruptcy laws is filed against Contractor and is not discharged within sixty (60) days from the date of filing;

2) Contractor makes a general assignment for the benefit of its creditors;

3) a receiver is appointed on account of the insolvency of Contractor;

4) In the reasonable opinion of Buyer, Contractor repeatedly refuses to supply or fails to cause to be supplied properly skilled workmen or proper materials in sufficient number or amounts to render services or perform Work hereunder;

5) In the reasonable opinion of Buyer, Contractor fails to comply with or fails to cause to be complied with the Project Schedule, and Buyer shall notify Contractor of such noncompliance and Contractor does not, within then (10) days of its receipt of such notice, cure or cause to be cured such noncompliance with the Project Schedule;

6) In the reasonable opinion of Buyer, Contractor fails to make, or fails to cause to be made, prompt payment to subcontractors or suppliers;

7) In the reasonable opinion of Buyer, Contractor disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work or the performance thereof; or

8) In the reasonable opinion of Buyer, Contractor otherwise is guilty of one or more violations of a material provision of this Contract and the Schedules hereto or of persistent violations of other provisions hereof,

then Buyer may, without prejudice to any other right or remedy under this Contract, at law or in equity, and after giving Contractor ten (10) days prior written notice, terminate this Contract or any Release and take possession of the Worksite (the “Notice of Termination for Cause”).

In the event of such termination, Buyer may (a) take possession of the Worksite and all materials, equipment, tools, and construction equipment and machinery thereto owned by Contractor; and (b) complete the Work by whatever method Buyer may deem expedient. In such case, Contractor shall not be entitled to receive any payment until Final Acceptance of the Work, and then only to the extent that Contractor shall be entitled to receive previously invoiced but unpaid direct and indirect cost (collectively, “Contractor’s Unpaid Costs”); provided, however, Contractor’s Unpaid Costs plus the cost of the Work as completed by Buyer, including compensation for additional professional services (collectively, “Buyer’s Completion Costs”) shall not exceed the total Release Price. If Contractor’s Unpaid Costs plus Buyer’s Completion Costs exceed the unpaid balance of the Release Price, Contractor will pay the difference to Buyer.

B. Termination by Buyer for Buyer's Convenience

1) Buyer may at any time terminate this Contract, any Release or any portion of the Work of this Contract for its convenience upon thirty (3) days prior (the “Notice of Termination for Convenience”) written notice to Contractor. In the event of termination of this Contract or any Release pursuant to the provisions hereof, subject to deduction for previous payments, Buyer shall compensate Contractor and Contractor shall accept as full compensation for all Work performed (a) Pro Rata compensation for the portion of the Work already performed; (b) reimbursement for expenditures made with Buyer's prior written approval; and (c) the reasonable cost of settlement.

2) The amount of any settlement may include a reasonable allowance for profit on Work completed on the terminated portion but no anticipatory profit of the Work terminated shall be allowed. No settlement agreed upon may exceed the total Release Price as reduced by (a) the amount previously paid and (b) the Release Price of Work not terminated. The Contract shall be amended and Contractor paid the agreed amount.

3) If Contractor and Buyer fail to agree on the entire amount to be paid because of the termination of Work, Buyer may pay to Contractor the amounts determined by Buyer to be due Contractor.

4) If Contractor fails to submit a termination settlement proposal within ninety (90) days following receipt from Buyer of the Notice of Termination for Convenience, and fails to request a time extension before expiration of the ninety (90) day period, Buyer shall pay to Contractor the amount determined by Buyer to be due Contractor. A dispute on the equitable adjustment of the terminated portion of this Contract or any release shall not excuse continued performance on the non-terminated portion of this Contract or any Release.

Where Contractor's services have been so terminated by Buyer pursuant to the conditions set forth above in this Paragraph B, said termination shall not affect any rights of Buyer against Contractor then existing or which may thereafter accrue. Any payment of monies due Contractor will not release Contractor from liability.

C. General Provisions Relating to Termination. Upon receipt of any notice of termination, Contractor shall:

1) cause all services and Work to be terminated;

2) cause no further orders or subcontracts to be placed;

3) assign or cause to be assigned to Buyer to the extent directed by Buyer, all of Contractor's rights, titles and any subcontracts and purchase orders theretofore placed hereunder pursuant to Article 19, Subcontracting; and

4) transfer or cause to be transferred to Buyer title, and deliver or cause to be delivered to Buyer, as directed by Buyer, all materials, equipment, plans, drawings and specifications produced, prepared or acquired for the purpose of performing under this Contract.

**44. SUSPENSION**

Buyer may at any time, with or without cause, suspend performance of all or any part of the Work by giving ten (10) days prior written notice to Contractor. Such suspension may be continued by Buyer for a period up to ninety (90) days during which period Buyer may at any time, by five (5) days prior written notice, require Contractor to resume performance of the Work or terminate that portion of the Work which has been suspended. Such termination shall be pursuant to the provisions of Article 43, Part B, Termination by Buyer for Buyer's Convenience.

Buyer shall not be liable for any damages or anticipated profits or for any charges against the costs incurred with respect to suspended portions of the Work during such period of suspension, except for such costs which (a) are incurred for the purpose of safeguarding the Work and materials and equipment in transit or at the Worksite; (b) are incurred for such personnel, lower tier subcontractor's or rented equipment which are maintained at the Worksite; or (c) are other reasonable and unavoidable costs of shutting down the Work or reassembling personnel and equipment resulting directly from such suspension. All costs resulting from (a), (b), or (c) above shall be included in the cost of Work, and may constitute an increase in the Release Price.

**45. WARRANTY**

In addition to any other warranties required by this Contract and the Schedules hereto, Contractor shall and hereby does warrant the Work against defects in workmanship and/or materials for a period of one (1) year after the date of Final Acceptance of the Work by Buyer except for any portion of the Work that is utilized or placed into service by Buyer in accordance with the provisions of Article 34, Use of Completed Portions. The warranty period for portions of the Work so utilized or placed into service shall be one (1) year commencing on the date of the written notification to Contractor described in Article 34, Use of Completed Portions. Contractor shall repair or remove and replace, at Contractor's sole expense, any and all Work, together with any other Work which may be displaced in so doing, that is found to be defective in workmanship and/or materials within the warranty period, ordinary wear and tear and unusual abuse or neglect excepted. If Contractor fails to repair or remove and replace warranted work and/or materials within seven (7) days after written notification of any defect in Work, Buyer is authorized hereunder to have all defects remedied and repaired at the cost and expense of Contractor, who hereby agrees to pay the cost and charges therefore immediately on demand. Such action by Buyer will not relieve Contractor of its obligations required by this Article 45, or any other provision in this Contract and the Schedules hereto.

If, in the opinion of the Authorized Releaser, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to Buyer, or to prevent interruption of operation to Buyer's operations, the Authorized Releaser may give Contractor verbal notice to remedy such defect within forty-eight (48) hours. All verbal notices shall be confirmed by written notice. If Contractor fails to take appropriate action in a timely manner in response to the notice, or if Contractor cannot be contacted directly, Buyer is authorized hereunder to proceed on Contractor's account to correct or provide necessary attention to the defective condition. The costs of any action taken by Buyer pursuant to such constructive authority shall be payable by Contractor immediately upon demand. No action taken by Buyer on behalf of Contractor pursuant to this provision shall be deemed to relieve Contractor of its obligations required by this Article 45 or any other provision in this Contract and the Schedules hereto.

This Article 45 does not in any way limit the Warranty on any items for which a longer warranty is specified or on any items which a manufacturer or supplier gives a warranty for a longer period. Contractor shall act as a co-warrantor with such manufacturer or supplier and shall furnish Buyer all appropriate warranty certificates upon completion of the Work. No warranty period, whether provided for in this Article 45 or elsewhere in this Contract and the Schedules hereto, shall in any way limit Contractor's liability or his sureties or insurers under the indemnity or insurance provisions of this Contract and the Schedules hereto. Buyer and Contractor shall mutually agree on Contractor’s responsibility with regard to warranty on Buyer-furnished or used equipment used on the Work.

Contractor expressly warrants that all items delivered hereunder shall be free from defects and of good materials and workmanship including, without limitation, that the items will function properly in and beyond the year 2000 and not be adversely affected by dates subsequent to December 31, 1999, and shall conform to applicable specifications, drawings, samples, and performance specifications whether set forth in this contract or in Contractor’s sales literature.

**46. FORCE MAJEURE**

If the performance by either party of any obligation hereunder is delayed for any reason beyond such party's reasonable control, the time for the performance thereof shall be extended for a period equal to the greater of the number of days of such delay or the number of days reflecting the impact of the incident causing the delay if, within ten (10) days from the occurrence of any such delay, the affected party gives the other party a written request for extension and such request is approved by the other party, which approval will not be unreasonably withheld. Without limiting the foregoing, any delay caused by acts of God, wars, riots, revolutions, embargoes, acts (including delay or failure to act) of any governmental authority (de jure or de facto), fires, floods, accidents, quarantines, sabotage, epidemics or unusually severe and abnormal weather conditions, shall be deemed a delay caused by reasons beyond a party's reasonable control. If unusually severe and abnormal weather conditions are the basis for a Request for an extension of time, such request shall be documented by data substantiating that weather conditions were unusually severe and abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the Project Schedule.

**47. MODIFICATION AND WAIVER**

No cancellation, modification, amendment, deletion, addition or other change in this Contract or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in a writing signed by both parties hereto. No right or remedy in this Contract shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of any right or remedy in respect of any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion. Inspection by, payment by, or tentative approval or acceptance by Buyer, or the failure of Buyer to perform any inspection hereunder, shall not release Contractor from any of its obligations hereunder.

**48. SECURITY**

Contractor shall comply with Buyer's security policies and procedures. Contractor will submit to the Authorized Releaser the names of each employee and any additional information that may be necessary twenty-four (24) hours prior to the date the Work is to commence.

All personnel furnished by Contractor hereunder shall be cleared to the security level required by Buyer prior to reporting to work.

**49. LABOR DISPUTES**

A. Whenever an actual or potential labor dispute involving Contractor delays or threatens to delay the timely performance of this Contract, Contractor shall immediately give notice thereof in writing to Buyer.

B. Labor disputes or delays are Contractor's responsibility. Contractor is obligated and responsible to continue performance on this Contract to meet schedules at no additional cost to Buyer.

C. Contractor shall insert the substance of this clause in all subcontracts issued hereunder.

**50. CONFIDENTIALITY**

Contractor shall treat all information relating to the Work as confidential and proprietary information of Buyer. Contractor shall not permit its release to other parties or make any public announcements or public releases, or make public any photographs without Buyer's prior written consent. Contractor shall also cause its subcontractors and suppliers to comply with this requirement.

**51. INDEPENDENT CONTRACTOR**

Contractor agrees that in the performance of this Contract, Contractor shall act as an independent contractor and all of its agents and employees, and agents and employees of its subcontractors and suppliers, shall be subject solely to the control, supervision, and authority of Contractor or its subcontractor or suppliers. Nothing contained in this Contract and the Schedules hereto shall create any contractual relationship between Buyer and any subcontractor except as provided in Article 19, Subcontracting.

**52. DISPUTES**

In the event of a dispute between Buyer and Contractor arising under this Contract, Contractor shall notify Buyer's Manager of Contract Administration promptly in writing of its contentions and the parties will negotiate in good faith to resolve such matters. Contractor agrees to proceed diligently with the performance of the Work hereunder as directed by Buyer pending resolution of any such dispute. Should the dispute not be resolved to the mutual satisfaction of the parties, either party may further pursue resolution of the dispute through normal legal remedies permitted by law.

**53. THIRD PARTY CLAIMS**

Nothing contained herein shall be deemed to give any third party any claim or right of action against Buyer or Contractor, which does not otherwise exist with regard to this Contract.

**54. LANDS AND RIGHTS-OF-WAY**

Access to the lands and rights-of-way for the Work to be constructed will be provided by Buyer.

Work in public rights-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located in addition to conforming to the plans and specifications. If a permit is not required, the Work shall conform to the standards of the public agency involved in addition to conforming to the plans and specifications.

**55. NOTICE AND SERVICE THEREOF**

Any notice required or given under the Contract shall be in writing, be dated, and signed by the party giving such notice or his duly authorized representative, and be served as follows:

If to Buyer, by personal delivery or electronically scanned and/or by deposit in the United States mail.

If to Contractor, by personal delivery to Contractor or to it’s authorized representative or Superintendent at the Worksite or electronically scanned and/or by deposit in the United States mail.

If to the surety or any other person, by personal delivery to said surety or other person or electronically scanned and/or by deposit in the United States mail.

All mailed notices shall be in sealed envelopes, shall be sent by registered or certified mail, return receipt requested, with postage prepaid, and shall be addressed to the addresses stated in the Contract cover sheet or such substitute addresses as a party may have designated in writing and served on the other party as set forth herein.

**56. WAIVER OF RIGHTS**

Except as otherwise specifically provided in this Contract and the Schedules hereto, no action or failure to act by Buyer, the Authorized Releaser, or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract and the Schedules hereto, nor shall any such action or failure to act constitute an approval of an acquiescence in any breach thereunder.

**57. PROPERTY RIGHTS IN MATERIALS**

Nothing in the Contract shall be construed as vesting in Contractor any right of property in materials after they have been attached or affixed to the Work or the soil or for materials delivered to the Worksite or stored subject to or under the control of Buyer. All such materials shall become the property of Buyer upon being so attached or affixed or upon payment for materials delivered to the Worksite or stored subject to or under the control of Buyer.

Soil, stone, gravel, and other materials found at the Worksite may be used in the Work if they conform to the plans and specifications. No other use shall be made of such materials except as required by this Contract and the Schedules hereto.

**58. ARCHEOLOGICAL ARTIFACTS**

If Contractor unearths or otherwise discovers items identified as being archeological artifacts, Contractor shall immediately stop all Work in the area and promptly advise Buyer. Contractor further agrees that no Work in the area will be resumed until written notification is received from Buyer to do so. Buyer agrees that, if Contractor incurs an increase in time or costs as a result of such Work stoppage, an equitable adjustment will be made to the Contract.

**59. ATTORNEYS' FEES**

If either party to this Contract brings an action to enforce any provision of the Contract, the prevailing party shall be entitled to recover his reasonable attorneys' fees and costs in connection therewith.

**60. HEADINGS**

The heading and titles to the Articles of this Contract and the Schedules hereto are inserted for convenience only and in no way define, limit, construe or describe the scope or intent of such Articles or provisions nor in any way affect this Contract.

**61. REMEDIES**

The rights and remedies provided for herein are in addition to, and not in limitation of, any other rights and remedies under this Contract, at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

**62. SEVERABILITY**

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**63. SURVIVAL**

Obligations provided under Articles 23, 30, 45, 47, 50 and 51 shall survive termination of this Contract.

**64. ASSIGNMENT**

The performance of this Contract or any Release may not be assigned by Contractor except upon the prior written consent of Buyer. Consent will not be given to any assignment requested by Contractor, which would relieve the original Contractor or his surety of their responsibilities under this Contract, nor will Buyer consent to any assignment of a part of the Work hereunder.

Upon obtaining Buyer's prior written consent, Contractor may, to the extent permitted by law, assign monies due or to become due him under the Contract or any Release, but any such assignment of monies shall be subject to rights of setoff in favor of Buyer or third parties and to all deductions provided for in the Contract. All monies withheld, whether assigned or not, shall be subject to Buyer's use of such moneys for the completion of the Work.

No assignment of this Contract will be approved by Buyer unless the assignment contains a provision certifying that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied by third parties for performance of the Work hereunder in favor of such individual or entity rendering such services or supplying such materials and that Buyer may withhold from Contractor's assignee all monies due until all Work required by any Release is completed in accordance with this Contract and the Schedules hereto.

**65. CONTROLLING LAW**

All questions concerning the validity and operation of this Contract and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the state in which the Worksite is located.

**66. ORDER OF PRECEDENCE**

All Contract Documents are intended to be complementary. If not, the descending order of precedence shall be (a) General Provisions, (b) Statement of Work, (c) Specifications and (d) Project Drawings.

**67. CONTRACT RENEWAL**

Buyer reserves the right to extend the subject agreement for one (1) additional year upon mutual agreement of labor rates.

**68. CONSTRUCTION**

Each party hereto agrees and represents that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in any interpretation of this Agreement or any amendments, exhibits of Schedules hereto.

**69. ENTIRE CONTRACT**

This Contract, which includes these General Provisions, all schedules, exhibits, and other attachments hereto, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, commitments, representations, or understandings relative thereto between the parties, whether written or oral.