

APPENDIX C

DRAFT LANGUAGE

SECTION 00520

SAMPLE AGREEMENT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENVIRONMENTAL REMEDIATOR ON THE BASIS OF A STIPULATED PRICE

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

Prepared in Cooperation With
ENVIRONMENTAL BUSINESS ACTION COALITION



This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Environmental Remediator (No. R-700) (2000 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested language contained in the Commentary on EJCDC Environmental Remediation Documents (No. R-001) (2000 Edition) is also carefully interrelated with the language of this Agreement.

EJCDC No. R-520 (2000 Edition)

EJCDC R-520 Standard Form of Agreement Between Owner and Environmental Remediator
on the Basis of a Stipulated Price
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Note to User

Before entering into this Agreement, it is recommended that the parties determine whether applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for an environmental remediation project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

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1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4344

Article 3. CONTRACT TIMES

[Strike inapplicable paragraph(s)]

3.01. Dates for Substantial Completion and Final Payment

A. The Remediation will be substantially completed on or before _____, _____, and completed and ready for final payment in accordance with paragraph 13.09 of the General Conditions on or before _____, _____.

[or]

3.01. Days to Achieve Substantial Completion and Final Payment

A. The Remediation will be substantially completed within _____ days after the date when the Contract Times commence to run as provided in paragraph 2.02.A of the General Conditions, and completed and ready for final payment in accordance with paragraph 13.09 of the General Conditions within _____ days after the date when the Contract Times commence to run.

[or]

3.01. Time for Performance

A. The parties recognize that it may be difficult to predict when the Remediation will be complete because, among other reasons: a) there may be multiple phases of investigation before design; and b) regulatory approval for remediation projects are unpredictable. Environmental Remediator shall proceed with the Remediation in a diligent manner and shall substantially complete the Remediation within a reasonable period of time.

[When this option is used, strike paragraph 3.02.A and B. Also strike references to "Contract Times" in General Conditions paragraphs 1.01.A.13, 2.02, 14.01 and Articles 9 and 11.]

3.02. Liquidated Damages

A. Environmental Remediator and Owner recognize that time is of the essence of this Agreement.

B. Environmental Remediator and Owner further recognize that Owner will suffer financial loss if the Remediation is not completed within the times specified in paragraph 3.01.A, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner if the Remediation is not completed on time. Accordingly, instead of requiring any such proof, Owner and Environmental Remediator agree that as liquidated damages for delay (but not as a penalty) Environmental Remediator shall pay Owner \$ _____ for each day that expires after the time specified in paragraph 3.01.A for Substantial Completion until the Remediation is substantially complete. After Substantial Completion, if Environmental Remediator shall neglect, refuse or fail to complete the remaining Remediation within the time specified in paragraph 3.01.A for completion and readiness for final payment or any proper extension thereof granted by Owner, Environmental Remediator shall pay Owner \$ _____ for each day that expires after the time specified in paragraph 3.01.A for completion and readiness for final payment.

[Where failure to reach a Milestone on time is of such consequence to Owner that the assessment of liquidated damages for failure to reach one or more Milestones on time is to be provided, appropriate amending or supplementing language should be inserted here.]

Article 4. CONTRACT PRICE

4.01. Owner shall pay Environmental Remediator the following sum(s) for completion of the Remediation in accordance with the Contract Documents.

A. For all Remediation other than Unit Price Remediation, a Lump Sum of \$ _____.

**EJCDC R-520 Standard Form of Agreement Between Owner and Environmental Remediator
on the Basis of a Stipulated Price**

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B. The following cash allowances are included in the above price and have been computed in accordance with paragraph 10.03.A of the General Conditions.

Item	Allowance
	\$ _____
	\$ _____

[Attach additional pages if required]

C. For all Unit Price Remediation, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Remediation times the estimated quantity of that item as indicated in this paragraph 4.01.C. As provided in paragraph 10.04.B of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Owner. Unit prices have been computed as provided in paragraph 10.04.A of the General Conditions.

UNIT PRICE REMEDIATION

NO.	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL ESTIMATED
-----	------	------	--------------------	------------	-----------------

[Attach additional pages if required]

TOTAL OF ALL UNIT PRICES \$ _____

(Strike paragraph 4.02 if inapplicable)

4.02. The factor used to calculate the chargeable cost for employees in the direct employ of Environmental Remediator performing Design Professional Services in accordance with paragraph 10.02.A.1.b of the General Conditions shall be. _____

Article 5. PAYMENT PROCEDURES

5.01. Environmental Remediator shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. Progress Payments; Retainage. Owner shall make progress payments on account of the Contract Price on the basis of Environmental Remediator's Applications for Payment, on or about the _____ day of each month during performance of the Remediation as provided in paragraphs 5.01.A.1 and A.2 below. All such payments will be measured by the acceptable Schedule of Values established under paragraph 2.06.A of the General Conditions (and in the case of Unit Price Remediation based on the number of units completed).

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.04.B of the General Conditions.

a. _____ percent of Remediation completed (with the balance being retainage). If the Remediation has been 50 percent completed as determined by Owner, and if the character and progress of the Remediation have been satisfactory to Owner, Owner may determine that as long as the character and progress of the Remediation remain satisfactory to Owner, there will be no additional retainage on account of Remediation completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Remediation completed.

b. _____ percent (with the balance being retainage) of the cost of materials and equipment not incorporated in the Remediation (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 13.02.A of the General Conditions).

2. Upon Substantial Completion, payment will be made in an amount sufficient to increase total payments to Environmental Remediator to _____ percent of the Contract Price (with the balance being retainage), less such amounts as Owner may withhold in accordance with paragraph 13.04.B of the General Conditions.

B. Final Payment. Upon final completion and acceptance of the Remediation in accordance with paragraph 13.09 of the General Conditions, Owner shall pay the remainder of the Contract Price.

Article 6. INTEREST

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of _____ percent per annum.

Article 7. ENVIRONMENTAL REMEDIATOR'S REPRESENTATIONS

7.01. Environmental Remediator makes the following representations:

A. Environmental Remediator has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 8.01.A through I but excluding the documents described in paragraph 8.01.J.

B. Environmental Remediator has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Remediation.

C. Environmental Remediator is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Remediation.

D. Environmental Remediator has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner.

E. Environmental Remediator is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Remediation as indicated in the Contract Documents.

F. Environmental Remediator has correlated the information known to Environmental Remediator, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

G. Environmental Remediator has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Environmental Remediator has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Environmental Remediator, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Remediation.

Article 8. CONTRACT DOCUMENTS

8.01. The Contract Documents which comprise the entire agreement between Owner and Environmental Remediator concerning the Remediation consist of the following:

- A. This Agreement (pages 1 to _____, inclusive).
- B. Exhibits to this Agreement (pages _____ to _____, inclusive).
- C. Conceptual Documents identified in the Request for Proposal.
- D. Environmental Remediator's Proposal.
- E. Performance, Payment, and other Bonds, identified as Exhibits _____ and consisting of _____ pages.
- F. Standard General Conditions of the Contract Between Owner and Environmental Remediator (pages 1 to _____, inclusive).
- G. Supplementary Conditions (pages _____ to _____, inclusive).
- H. Addenda numbers _____ through _____ inclusive.
- I. Documentation submitted by Environmental Remediator prior to Notice of Award (pages _____ to _____, inclusive).
- J. The following which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto.
 - 1. Notice to Proceed.
 - 2. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.03.A of the General Conditions.
 - 3. Specifications as defined in Paragraph 1.01.A.42 of the General Conditions.
 - 4. Drawings as defined in Paragraph 1.01.A.14 of the General Conditions.

8.02. The documents listed in paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

8.03. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.03.A of the General Conditions.

Article 9. MISCELLANEOUS

9.01. The Standard General Conditions of the Contract Between Owner and Environmental Remediator are referred to herein as the General Conditions.

9.02. Terms used in this Owner-Environmental Remediator Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated therein.

9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.04. Owner and Environmental Remediator each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Environmental Remediator, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.06. [Insert other provisions here if applicable.]

IN WITNESS WHEREOF, Owner and Environmental Remediator have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Environmental Remediator. All portions of the Contract Documents have been signed, initialed or identified by Owner and Environmental Remediator.

This Owner-Environmental Remediator Agreement will be effective on _____, _____.

Owner: _____

Environmental Remediator: _____

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach (a) evidence of authority to sign, (b) resolution or other documents authorizing execution of Agreement and (c) statement of fiscal officer regarding availability of funds.)

License No. _____
(Where applicable)

(If Environmental Remediator is a corporation, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

E-Mail: _____

E-Mail: _____

SECTION 00700

GENERAL CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**STANDARD GENERAL CONDITIONS
OF THE CONTRACT BETWEEN
OWNER AND ENVIRONMENTAL REMEDIATOR**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

These General Conditions have been prepared for use with either one of the two Agreements between Owner and Environmental Remediator (Nos. R-520 and R-525, 2005 Editions) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the others. The Commentary on EJCDC Environmental Remediation Documents (No. R-001, 2005 Edition) contains comments concerning the use of the General Conditions.

Copyright © 2005 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

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STANDARD GENERAL CONDITIONS
OF THE CONTRACT BETWEEN
OWNER AND ENVIRONMENTAL REMEDIATOR

ARTICLE 1 – DEFINITIONS

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:
1. *Addenda* – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.
 2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Environmental Remediator covering the Remediation.
 3. *Application for Payment* – The form which is to be used by Environmental Remediator in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bonds* – Performance and Payment Bonds and other instruments of security.
 6. *Change Directive* – A written directive to Environmental Remediator, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Remediation, or responding to differing site conditions under which the Remediation is to be performed as provided in paragraph 4.04 or to emergencies under paragraph 6.16. A Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
 7. *Change Order* – A written order which is signed by Environmental Remediator and Owner which authorizes an addition, deletion or revision in the Remediation, or an adjustment in the Contract Price or the Contract Times, or both, issued on or after the Effective Date of the Agreement.

8. *Claim* – A demand or assertion by Owner or Environmental Remediator seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.
9. *Conceptual Documents* – The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner’s requirements for the Project, such as Remediation objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Remediation to be performed or furnished and which have been prepared by or for Owner.
10. *Construction* – The result of performing or furnishing of labor, the furnishing and operation of equipment, and the furnishing and incorporating of materials and equipment into the Remediation, all as required by the Contract Documents.
11. *Contaminant* – Any substance or material that is regulated by Laws or Regulations to protect the public health or the environment due to its characteristics or as a result of its quantity or both. A contaminant may include, but is not limited to the following: Asbestos, Hazardous Substances, Hazardous Wastes, PCBs, Petroleum, or Radioactive Materials.
12. *Contract* – The entire and integrated written agreement between Owner and Environmental Remediator concerning the Remediation. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
13. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of those items listed in the Agreement are Contract Documents.
14. *Contract Price* – The moneys payable by Owner to Environmental Remediator for completion of the Remediation in accordance with the Contract Documents.
15. *Contract Times* – The numbers of days or the dates stated in the Agreement to (a) achieve Substantial Completion, and (b) complete the Remediation so that it is ready for final payment in accordance with paragraph 13.08.
16. *Drawings* – Those portions of the Contract Documents prepared by or for Environmental Remediator and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Remediation.
17. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

18. *Engineer* – A duly licensed individual or entity designated by Environmental Remediator to perform or furnish specified Professional Services in connection with the Remediation.
19. *Environmental Remediator* – The individual or entity with whom Owner has entered into the Agreement.
20. *Field Order* – A written order issued by Owner which requires minor changes in the Remediation but which does not involve a change in the Contract Price or the Contract Times.
21. *Hazardous Substance* – Unless otherwise defined in the Supplementary Conditions the term Hazardous Substance shall have the meaning provided in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601(14)), as amended.
22. *Hazardous Waste* – Unless otherwise defined in the Supplementary Conditions, the term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. Section 6903), as amended.
23. *Indemnitee* – Environmental Remediator, Subcontractors, Suppliers, Engineers and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them.
24. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
25. *Liens* – Charges, security interests or encumbrances upon Project funds, real property or personal property.
26. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Remediation.
27. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent enumerated therein, within the time specified, Owner will sign and deliver the Agreement.
28. *Notice to Proceed* – A written notice given by Owner to Environmental Remediator fixing the date on which the Contract Times will commence to run and on which Environmental Remediator shall start to perform the Remediation.
29. *Owner* – The public body, or authority, individual or entity with whom Environmental Remediator has entered into the Agreement and for whom the Remediation is to be provided.

30. *Owner's Consultant* – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.
31. *Partial Utilization* – Use by Owner of a substantially completed part of the Remediation for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Remediation.
32. *PCBs* – Polychlorinated biphenyls.
33. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes.
34. *Professional Services* – Services required to be performed by a licensed or registered professional, as well as services provided by, for or on behalf of such a professional, including but not limited to investigation, testing, evaluation, alternatives analysis, regulatory submittals and reports.
35. *Project* – The total undertaking of which the Remediation to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
36. *Proposal* – The documents submitted by a proposer to serve as Environmental Remediator in response to the Request for Proposals setting forth the Remediation concepts, proposed prices, and other conditions for the Remediation to be performed.
37. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) as amended from time to time.
38. *Remediation* – The entire completed effort or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Remediation includes and is the result of performing or furnishing Professional Services and Construction required by the Contract Documents.
39. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
40. *Resident Project Representative* – An authorized representative of Owner who may be assigned to the Site or any part thereof.

41. *Schedule of Values* – A schedule prepared by Environmental Remediator and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Remediation.
42. *Site* – Lands, structures, facilities or other areas designated in the Contract Documents to be furnished by Owner as the location of the Remediation and for the performance of the Construction, storage, and access.
43. *Specifications* – Those portions of the Contract Documents prepared by or for Environmental Remediator and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Remediation and certain administrative details applicable thereto.
44. *Subcontractor* – An individual or entity having a direct contract with Environmental Remediator or having a subcontract with such an individual or entity to perform a part of the Remediation.
45. *Submittal* – A written or graphic document prepared by or for Environmental Remediator which is required by the Contract Documents to be submitted to Owner by Environmental Remediator. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.
46. *Substantial Completion* – The time at which the Remediation (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Remediation (or a specified part) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Remediation refer to Substantial Completion thereof.
47. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Environmental Remediator or with any Subcontractor to furnish materials or equipment to be incorporated in the Remediation by Environmental Remediator or any Subcontractor.
49. *Uncovering Costs* – The costs and damages resulting from an Owner request under paragraphs 12.03.D or 12.04.B caused by or resulting from the uncovering, exposure, observation, inspection and testing any part of the Construction, including but not limited to the costs of satisfactory replacement or rework. Such costs and damages further include but are not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or

other dispute resolution costs, and all costs of repair or replacement of work of others.

50. *Unit Price Remediation* – Remediation to be paid for on the basis of unit prices.

1.02 *Terminology*

A. Intent of Certain Terms or Adjectives

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight until the next midnight.
2. The word “defective” when modifying the term “Construction” refers to Construction that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment complete and ready for intended use.
5. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Environmental Remediator, "provide" is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

- A. Environmental Remediator shall deliver such Bonds as Environmental Remediator may be required to furnish in accordance with paragraph 5.01.A within 10 days after receiving a copy of the Agreement executed by Owner.

2.02 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. Unless agreed to in writing by the Owner and Environmental Remediator, the Contract Times will commence to run no later than the 90th day after the last day for receipt of the Proposal or the 30th day after the Effective Date of the Agreement, whichever date is earlier.

2.03 *Before Starting Remediation*

- A. Before undertaking each part of the Remediation, Environmental Remediator shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Environmental Remediator shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Environmental Remediator may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Remediation affected thereby; however, Environmental Remediator shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Environmental Remediator knew or reasonably should have known thereof.
- B. Environmental Remediator shall submit to Owner the following within ten days after commencement of the Contract Times (unless otherwise specified in the Contract Documents):
 1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Remediation including each Milestone specified in the Contract Documents;
 2. a preliminary schedule of required Submittals and the times for submitting, reviewing and processing each Submittal;
 3. a preliminary Schedule of Values for all of the Remediation which will include quantities and prices of items aggregating the Contract Price and will subdivide the Remediation into component parts in sufficient detail to serve as the basis for progress payments during performance of the Remediation. Such prices will

include a pro rata amount of overhead and profit applicable to each item of Remediation;

4. a site-specific health and safety plan; and
 5. a description of required training and certification for employees of Environmental Remediator and its Subcontractors.
- C. Evidence of Insurance. Before any Remediation at the Site is started, Environmental Remediator and Owner shall each deliver to the other certificates of insurance as required by paragraph 5.03 which Environmental Remediator and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.04 *Starting the Remediation*

- A. Environmental Remediator shall start to perform the Remediation on the date when the Contract Times commence to run. No work shall be done at the Site prior to the date on which Contract Times commence to run.

2.05 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Environmental Remediator will arrange a conference attended by Owner, Environmental Remediator and others as appropriate to establish a working understanding among the parties as to the Remediation and to discuss the Remediation concepts, schedules and Submittals referred to in paragraph 2.03.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraphs 6.08 and 8.01.A.7. and other matters.

2.06 *Initial Acceptance of Schedules*

- A. At least ten days before submission of the first Application for Payment Environmental Remediator will arrange a conference attended by Environmental Remediator, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.03.B. Environmental Remediator shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Environmental Remediator until acceptable schedules are submitted to Owner as provided below.
1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Remediation to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Remediation nor relieve Environmental Remediator from Environmental Remediator's full responsibility therefor.

2. Environmental Remediator's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.
3. Environmental Remediator's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Remediation.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to describe a complete Project (or part thereof) to be Remediated in accordance with the Contract Documents. Any labor, documentation, services, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.
- C. Owner and Environmental Remediator understand that the Site contains Contaminants and that the scope of the Remediation may include the management and movement of Contaminants either on-site, off-site or both. They further understand that Environmental Remediator and Subcontractors have no responsibility for either the presence of Contaminants at the Site or Site conditions existing on the Effective Date of the Agreement. It is the intent of the Contract Documents that:
 1. Owner's status as an owner or operator of the Site or as a handler, generator, arranger or transporter of Contaminants, if any, shall not be transferred in any way to Environmental Remediator or Subcontractors;
 2. Environmental Remediator and Subcontractors shall not be deemed or alleged to be an owner or operator of the Site; and
 3. Environmental Remediator shall not be deemed or alleged to be a handler, generator, arranger, transporter or disposer of any Contaminant.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, or Regulations.
 1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code

or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Environmental Remediator or any of their Subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Remediation or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Resolving Discrepancies*

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.A.
- B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:
 1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents);
or
 2. the provisions of any such Laws or Regulations applicable to the performance of the Remediation (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Laws or Regulations).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Remediation or to modify the terms and conditions thereof in one or more of the following ways:
 1. owner's approval of required Submittals (pursuant to paragraph 6.17.B);
 2. a Change Directive;
 3. a Change Order; or
 4. a Field Order.

3.05 *Reuse of Documents*

- A. All documents including Drawings and Specifications prepared or furnished by Environmental Remediator pursuant to this Contract are for Environmental Remediator's own use. All intellectual property rights developed in the performance of the Contract are and shall remain the property of Environmental Remediator. Owner is hereby granted a limited non-exclusive license to make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project.
- B. Any reuse or any continued use after any termination without written verification or adaptation by Environmental Remediator for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Environmental Remediator. Owner shall indemnify and hold harmless Environmental Remediator from all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such reuse. Any such verification or adaptation will entitle Environmental Remediator to further compensation at rates to be agreed upon by Owner and Environmental Remediator.

3.06 *Electronic Data*

- A. Copies of data furnished by Owner to Environmental Remediator or by Environmental Remediator to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or of other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party .
- C. When transferring documents in electronic media format, transferring party makes no representations as to long term compatibility, usability, or the readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS CONDITIONS

4.01 Availability of Site and Other Lands

- A. Owner shall furnish and provide access to:
 - 1. all lands, including the Site and rights-of-way and easements for access thereto, as indicated in the Contract Documents, and
 - 2. such other lands and facilities that are designated or required for the use of Environmental Remediator, including but not limited to such off-site lands and facilities as are reasonably necessary to conduct investigation and monitoring.
- B. If Owner's furnishing of these lands is untimely or incomplete, or both, and if this causes Environmental Remediator to be delayed in performing the Remediation or incur additional costs, and if Environmental Remediator and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result, Environmental Remediator may make a claim therefor as provided in Article 9. Failure to furnish lands and provide access for 30 or more days is cause for termination by Environmental Remediator under paragraph 14.04.A.
- C. Upon reasonable written request, Owner will furnish Environmental Remediator with a current statement of record legal title and legal description of the Site and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. Owner shall notify Environmental Remediator of any encumbrances or restrictions not of general application but specifically related to use of the Site which Environmental Remediator will have to comply in performing the Remediation. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities .
- D. Environmental Remediator shall provide for all additional lands and access thereto that may be required for off-site temporary Construction facilities or storage of materials and equipment; provided that Environmental Remediator shall not be required to provide land and access thereto for the storage, treatment or disposal of any Contaminant.

4.02 Existing Conditions

- A. Owner represents that it has fully disclosed to Environmental Remediator any information that Owner knows or has reason to suspect concerning the existence of Contaminants at the Project Site. Owner will be responsible for any existing condition encountered at the Site that was not identified in the Contract Documents to be within the scope of the Remediation.

- B. Owner acknowledges that Environmental Remediator may have legal obligations with respect to public health and safety and will cooperate with Environmental Remediator to help ensure compliance with these obligations.
- C. Environmental Remediator shall periodically advise Owner of the presence and condition of Contaminants encountered at the Site.
- D. If Environmental Remediator discovers or identifies conditions for which it reasonably believes that the Owner is legally required to provide notice to a public agency, it shall so advise Owner and give Owner the first opportunity to provide such notification. In any event Environmental Remediator shall have the right to report the presence of any Contaminant to public agencies having jurisdiction if it reasonably believes that it is required by law to do so.
- E. The parties acknowledge and understand that the presence of Contaminants and other potentially hazardous conditions at the Site were not caused by or the responsibility of Environmental Remediator, and that the Contract Documents do not transfer any legal responsibilities for such conditions from Owner to Environmental Remediator. Accordingly, Owner shall maintain complete and absolute responsibility for the ownership, title and management of all Contaminants resulting from investigation and Remediation activities. This includes but is not limited to generation, handling, storage, transportation, treatment, arranging for disposal and disposal of waste materials from Environmental Remediator's activities on and off the Site, including but not limited to soil cuttings, drilling muds, purged ground water, decontamination fluids, disposable sampling equipment, and disposable personal protective equipment.
- F. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Indemnitees from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from: (1) any existing condition at the Site; (2) any allegation or claim that any Indemnitee is liable as an owner or operator; or (3) any allegation or claim that any Indemnitee is liable as a handler, generator, arranger, transporter, treater, storer or disposer of any Contaminant. Nothing in this paragraph 4.02.F. shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

4.03 *Reference Points*

- A. Environmental Remediator shall be responsible for laying out the Remediation and shall protect and preserve the reference points established by Owner pursuant to paragraph 8.01.A.7.e and shall make no changes or relocations without the prior written approval of Owner. Environmental Remediator shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be

responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Differing Site Conditions*

- A. Environmental Remediator shall promptly, and before the conditions are disturbed, give written notice to Owner of:
 - 1. subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents; or
 - 2. unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character called for by the Contract Documents; or
 - 3. the presence of Contaminants, contaminated areas or contaminated resources not disclosed in those Contract Documents in existence as of the date of receipt of the Proposal.
- B. Owner will investigate the Site conditions promptly after receiving the notice. If (1) the conditions do materially so differ, or (2) there is contamination not disclosed in the Contract Documents, and either (1) or (2) cause an increase or decrease in the Environmental Remediator's cost of, or the time required for, performing any part of the Remediation, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.
- C. No request by Environmental Remediator for an equitable adjustment under paragraph 4.04 shall be allowed unless Environmental Remediator has given the written notice required; provided that the time prescribed in paragraph 9.03.A for giving written notice may be extended by Owner.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment and Other Bonds*

- A. Environmental Remediator shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Environmental Remediator's obligations to furnish, provide and pay for the Remediation and related materials under the Contract Documents. These Bonds will remain in effect until at least one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Environmental Remediator shall also furnish such other Bonds as are required by the Supplementary Conditions. Environmental Remediator shall also furnish such other Bonds as are required by the Contract Documents.

- B. All Bonds will be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and will be executed by such sureties as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act.
- C. If the surety on any Bond furnished by Environmental Remediator is declared bankrupt, or becomes insolvent, or has its right to do business terminated in any state where any part of the Project is located, or ceases to meet the requirements of paragraph 5.01.B. or 5.02, Environmental Remediator will substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B. and 5.02 within 30 days of any of the aforementioned events.

5.02 *Licensed Sureties and Insurers*

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Environmental Remediator will be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Environmental Remediator will deliver to Owner, with copies to each other entity identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other entity) which Environmental Remediator is required to purchase and maintain. Owner shall deliver to Environmental Remediator, with copies to each entity indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Environmental Remediator or any other entity) which Owner is required to purchase and maintain.

5.04 *Environmental Remediator’s Liability Insurance*

- A. Environmental Remediator shall purchase and maintain the liability insurance set forth in Exhibit GC-A.

5.05 *Owner’s Liability Insurance*

- A. In addition to the insurance required to be provided by Environmental Remediator under paragraph 5.04, Owner will purchase and maintain its own liability insurance, at its expense, that will protect Owner against claims which may arise due to its ownership of the Site.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Environmental Remediator shall purchase and maintain property insurance for the Remediation in the amount of its full replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance must:
1. include a “loss payable provisions” endorsement naming Owner as a loss payee so that the payment of any loss will be made jointly to Owner and Environmental Remediator;
 2. contain a waiver of subrogation endorsement that will waive all rights of the insurance company against Owner, any of Environmental Remediator’s Subcontractors, Suppliers, or any other persons or entities that provide any services, material, equipment or labor for the Remediation;
 3. be written on an inland marine Builder’s Risk “all-risk” policy form that will at least include insurance for physical loss and damage to the Remediation, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: boiler explosion (through testing only), fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 4. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 5. cover materials and equipment intended to be incorporated in the Construction that is stored at the Site or at another location;
 6. be maintained in effect until final payment is made under this Agreement or the improvements are put to their intended use by Owner, whichever is earlier;
 7. allow Partial Utilization by Owner according to paragraph 5.09; and
 8. include an endorsement that the coverage afforded by this policy will not be canceled until at least 30 days’ prior written notice has been given to Owner and Environmental Remediator.
- B. Following successful testing of any boiler or pressure vessel that is part of the Construction, Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required to protect the interests of Owner and any other individuals or entities indicated in the Supplementary Conditions. Any policy providing such insurance will contain a waiver of subrogation endorsement that will waive all rights of the insurance company against Environmental Remediator, any

of Environmental Remediator's Subcontractors, Suppliers, or any other persons or entities that provide any services, material, equipment or labor for the Remediation.

- C. The risk of loss within any deductible amount under the property insurance to be purchased under this section by the respective parties will be borne by the party purchasing such insurance.

5.07 *Receipt and Application of Proceeds*

- A. Any insured loss under the policy of insurance required by paragraph 5.06.A. will be made payable to Environmental Remediator and Owner jointly, subject to the requirements of any applicable mortgage clause and of paragraph 5.07.B. The parties shall deposit in a separate account any money so received, and shall distribute it according to such agreement as the parties in interest may reach. If no agreement is reached, the damaged Remediation will be repaired or replaced, the moneys so received applied to such repair or replacement and such rework and its costs will be covered by an appropriate Change Order.
- B. Environmental Remediator will have power to adjust and settle any loss with the insurers unless one of the parties in interest objects in writing to Environmental Remediator's authority to exercise this power within 15 days after the occurrence of such loss. If such objection is made, Environmental Remediator will make settlement with the insurers according to such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Environmental Remediator will adjust and settle the loss with the insurers and, if required in writing by any party in interest, Environmental Remediator will provide a bond for the proper performance of such duties.

5.08 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If Owner or Environmental Remediator has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party according to Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.03.C. Owner and Environmental Remediator shall each provide to the other such additional information regarding the Bonds or insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Remediation, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order will be issued to adjust the Contract Price accordingly.

5.09 *Partial Utilization – Property Insurance*

- A. If Owner desires to occupy or use a portion or portions of the Site subject to the Remediation prior to Substantial Completion of all the Remediation as provided in paragraph 13.06.A., no such use or occupancy will commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice of such use or occupancy in writing by agreeing to make the necessary changes in coverage. These insurers will issue the necessary endorsements for such use or occupancy as soon thereafter as possible. The property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – ENVIRONMENTAL REMEDIATOR’S RESPONSIBILITIES

6.01 *Professional Services*

A. Standard of Care

1. The standard of care for Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the Environmental Remediator’s profession practicing under similar conditions at the same time and locality.
2. Environmental Remediator makes no representation, or warranty or guarantee, express or implied, including without limitation the implied at law warranties of merchantability and fitness for a particular purpose, as to its findings, recommendations, plans, Specifications, Drawings, or professional judgment or advice except as provided in paragraph 6.01.A.1.
3. Owner acknowledges that compliance with the standard of care is not an assurance that all risks applicable to Owner in connection with the Project have been identified and managed.

B. General Scope of Professional Services: After the Contract Times commence to run, Environmental Remediator shall perform the specific Professional Services described to Owner in the Contract Documents. Generally, Environmental Remediator, under the scope of Professional Services, may:

1. consult with Owner to understand Owner’s requirements for the Project;
2. advise Owner as to the necessity of Owner’s providing or obtaining from others additional reports, data or services of the types provided in paragraph 8.01.A.7 and assist Owner in obtaining such reports, data, or services;
3. assist Owner to identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Remediation to be performed by Environmental Remediator;

4. prepare documentation, Drawings and Specifications necessary to accomplish the objectives of the Remediation for review and approval by Owner;
5. assist Owner in preparing and making submittals for required public agency approvals, if any;
6. collect, analyze and evaluate samples of environmental media and Contaminants as necessary for the Remediation; and
7. identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

6.02 *Supervision and Superintendence of Construction*

- A. Environmental Remediator shall supervise, inspect and direct any Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Environmental Remediator shall be solely responsible for the means, methods, techniques, sequences and procedures employed by it to perform Construction. The means, methods, techniques, sequences and procedures employed by Owner or other contractors pursuant to Article 7 are the sole responsibility of the performing party. Environmental Remediator shall be responsible to see that the completed Construction conforms with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.
- B. At all times during progress of Construction, the Environmental Remediator shall assign a qualified resident superintendent, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Environmental Remediator's representative at the Site and shall have authority to act on behalf of Environmental Remediator. All communications given to or received from the superintendent shall be as binding on Environmental Remediator.

6.03 *Labor; Working Hours*

- A. Environmental Remediator shall provide suitably qualified personnel to perform the Construction as required by the Contract Documents. Environmental Remediator shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Environmental Remediator will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Environmental Remediator shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the Construction.
- B. All materials and equipment incorporated into the Construction shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Environmental Remediator shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 *Progress Schedule*

- A. Environmental Remediator shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time.
- B. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11. Such adjustments may only be made by a Change Order.

6.06 *Concerning Subcontractors, Suppliers and Others*

- A. Environmental Remediator shall not contract with any Subcontractor, Supplier or other individual or entity against whom Owner may have reasonable objection. Environmental Remediator shall not be required to contract with any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Remediation against whom Environmental Remediator has reasonable objection.
- B. Environmental Remediator shall be fully responsible to Owner for all acts and omissions of Subcontractors, Engineers, Suppliers and other individuals or entities performing or furnishing any of the Remediation just as Environmental Remediator is responsible for Environmental Remediator's own acts or omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Engineer, Supplier or other individual or entity except as may otherwise be required by Laws and Regulations.

- C. Environmental Remediator shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Remediation under a direct or indirect contract with Environmental Remediator.
- D. Environmental Remediator shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Remediation to communicate with the Owner through Environmental Remediator.
- E. All Remediation performed for Environmental Remediator by a Subcontractor or Supplier will be pursuant to an appropriate written subagreement between Environmental Remediator and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

6.07 *Patent Fees and Royalties*

- A. Environmental Remediator shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Remediation or the incorporation in the Remediation of any invention, design process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design process, product or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.
- B. To the fullest extent permitted by Laws or Regulations, Environmental Remediator shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Remediation or resulting from the incorporation in the Remediation of any invention, design, process, product or device not identified in the Conceptual Documents.
- C. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Indemnitees, from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Remediation or resulting from the incorporation in the Remediation of any invention, design process, product or device required by the Conceptual Documents.

6.08 *Permits*

- A. Environmental Remediator shall obtain and pay for those permits, approvals, certifications and licenses of governmental authorities having jurisdiction over the Remediation, specifically described and identified as Environmental Remediator's responsibility in the Contract Documents. Owner shall assist Environmental Remediator in obtaining such permits, approvals, certifications and licenses.
- B. Owner shall be responsible to obtain and pay for all required permits, approvals, certifications, licenses, utility charges, governmental charges and inspections that are not specifically identified in the Contract Documents as the Environmental Remediator's responsibility. Environmental Remediator shall assist Owner in obtaining such permits, approvals, certifications and licenses.

6.09 *Laws and Regulations*

- A. Except as provided in paragraph 4.02.D, Environmental Remediator shall give all notices and comply with all Laws or Regulations applicable to performance of the Construction. Except where otherwise expressly required by applicable Laws and Regulations or the Contract Documents, Owner shall not be responsible for monitoring Environmental Remediator's compliance with any Laws or Regulations relating to Construction.
- B. If Environmental Remediator performs any Construction knowing or having reason to know that it is contrary to Laws or Regulations, Environmental Remediator shall bear all costs arising therefrom.
- C. Changes in Laws and Regulations not in effect on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 *Taxes*

- A. Environmental Remediator shall pay all sales, consumer, use, gross receipts and other similar taxes required to be paid by Environmental Remediator in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Remediation.

6.11 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas.
 - 1. Environmental Remediator shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Environmental

Remediator shall assume full responsibility for any damage to any such land or area incurred by any person or entity other than Owner, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Remediation.

2. Should any claim be made by any such owner or occupant that it has suffered damages solely because of the performance of the Remediation, Environmental Remediator shall promptly take reasonable action to settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- B. Environmental Remediator shall manage accumulations of materials and rubbish related to on-site investigations and Construction, subject to Owner's responsibilities for materials and rubbish that may be contaminated during the performance of the Remediation.

6.12 *Record Documents*

- A. Environmental Remediator shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives and Field Orders, in good order and annotated to show changes made during performance of the Remediation. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Remediation, these record documents and Submittals, including a reproducible set of record Drawings, will be delivered to Owner.

6.13 *Safety and Protection*

- A. Environmental Remediator shall maintain a safe working environment during performance of the Remediation. Environmental Remediator shall comply, and shall secure compliance by its employees, agents, and Subcontractors, with all applicable health and safety laws and regulations, including without limitation, Federal OSHA (and specifically including 29 CFR 1910.120 and 1926.65) and equivalent Laws and Regulations.
- B. Environmental Remediator shall prepare and implement its own Project health and safety plan, based on its health and safety program and all written programs required by Federal, State and local regulations and shall bear responsibility for the completeness and accuracy of the plan. Environmental Remediator's health and safety plan and required documentation shall be available at the Site for review by Owner, Subcontractors and regulatory personnel.
- C. Environmental Remediator shall consider the requirements of any applicable site safety plan prepared by Owner when developing Environmental Remediator's health and safety plans.

- D. Environmental Remediator shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Construction. Environmental Remediator shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Remediation;
 2. all Construction and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of Construction.
- E. Environmental Remediator shall comply with applicable Laws or Regulations relating to safety of persons or property or to the protection of persons or property from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Environmental Remediator shall notify owners of adjacent property and of underground facilities and utility owners when performance of the Remediation may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- F. All damage, injury or loss to any property referred to in paragraph 6.13.D.2 or 6.13.D.3 caused, directly or indirectly, in whole or in part, by Environmental Remediator, any Subcontractor, Supplier or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the Remediation or anyone for whose acts any of them may be liable, shall be remedied by Environmental Remediator; provided that nothing in this paragraph shall waive or otherwise limit any claim that Environmental Remediator may have for contribution, indemnification, reimbursement or additional compensation.
- G. Environmental Remediator's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Remediation is completed and Owner has issued a notice to Environmental Remediator in accordance with paragraph 13.08.B. that the Remediation is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Environmental Remediator shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs associated with Environmental Remediator's activities at the Site. Nothing in this Agreement requires Environmental Remediator to assume or perform accident prevention or safety responsibilities in connection with activities or operations of Owner or other entities operating at the Site.

6.15 *Hazard Communication Programs*

- A. Environmental Remediator shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Remediation or property at or adjacent to the Site, Environmental Remediator is obligated to act to prevent threatened damage, injury or loss. Environmental Remediator shall give Owner prompt written notice if Environmental Remediator believes that any significant changes in the Remediation or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Environmental Remediator in response to such an emergency, a Change Directive or Change Order will be issued.

6.17 *Submittals*

- A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Construction, conform to the information given in the Contract Documents and be compatible with the Remediation concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences or procedures of Construction (except where a particular means, method, technique, sequence or procedure of Construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. Owner's review and approval of required Submittals shall not relieve Environmental Remediator from responsibility for any variation from the requirements of the Contract Documents unless Environmental Remediator has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.
- C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Environmental Remediator.

6.18 *Continuing the Remediation*

- A. Except as expressly permitted by paragraphs 6.18.B and 14.04.A, Environmental Remediator shall carry on the Remediation and adhere to the progress schedule during

all disputes or disagreements with Owner. No Remediation shall be delayed or postponed pending resolution of any disputes or disagreements, except as Environmental Remediator and Owner may otherwise agree in writing.

- B. Environmental Remediator may suspend operations if a dispute or disagreement relates to work that must be performed before additional work can be performed to the extent necessary to protect public health and safety or the environment, or as otherwise authorized in the Contract Documents.

6.19 *Environmental Remediator's General Warranty and Guarantee*

- A. Environmental Remediator warrants to Owner that all Construction will be according to the Contract Documents and will not be defective. However, these warranties cover equipment, accessories and parts manufactured by others only to the extent of liability to Environmental Remediator on the part of their manufacturer. Any warranty obtained by Environmental Remediator from any such manufacturer will be deemed to have been obtained for the benefit of Owner. The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for purpose. Environmental Remediator's warranties exclude defects or damage caused by:
 - 1. abuse, modification, improper or inadequate maintenance, or improper operation by persons other than Environmental Remediator, Subcontractors or Suppliers or any other individual for whom Environmental Remediator is responsible; or
 - 2. normal wear and tear under normal usage.
- B. Owner acknowledges that completion of the Remediation in accordance with the Contract Documents may not constitute all necessary remedial activities. While it is the intent of the Owner and Environmental Remediator to avoid its occurrence, continued, additional or other remedial action may be required by Owner after the completion of the planned Remediation. For example, Owner may remain responsible by law for Contaminants which are not the subject of the Remediation or contaminated residuals resulting from the Remediation. Varying characteristics of the Contaminants may require in-progress modifications to the intended Construction to achieve the intended objective(s) of the Remediation. Therefore, Environmental Remediator makes no representation, or warranty or guarantee, express or implied, that the Remediation will result in a complete resolution for Owner of responsibilities and liabilities for Contaminants and their residuals associated with the Site, or that the Site will become completely free of all Contaminants or fit for all uses.
- C. None of the following will constitute an acceptance of Remediation that is not in accordance with the Contract Documents or a release of Environmental Remediator's obligation to perform the Remediation in accordance with the Contract Documents:
 - 1. observations by Owner;

2. the making of any progress or final payment;
3. the issuance of a certificate of Substantial Completion;
4. use or occupancy of the Site or any part thereof by Owner;
5. any review or approval of a Submittal;
6. any inspection, test or approval by others; or
7. any correction of defective Construction by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws or Regulations, Environmental Remediator shall indemnify and hold harmless Owner, Owner's Consultants, the officers, directors, partners, and employees, agents, other consultants and subcontractors of each from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the failure of Environmental Remediator to meet the standard of care as described in paragraph 6.01.A for its Professional Services, or for its negligent acts or omissions during performance of Construction, provided that: (1) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Construction itself); and (2) such obligation shall apply only to the extent such claim, cost, loss or damage is caused by any negligent act or omission of Environmental Remediator or any of its Subcontractors, Engineers, Suppliers, or any other individual or entity for whose acts Environmental Remediator is liable at common law.
- B. In any and all claims against Owner, Owner's Consultant or any of their respective consultants, agents, officers, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Environmental Remediator or any of its Subcontractors, Suppliers, or any other individual or entity for whose acts Environmental Remediator is liable at common law, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Environmental Remediator or any such Subcontractor, Engineer, Supplier or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 *Related Remediation at Site*

- A. Owner may perform other work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Environmental Remediator prior to starting any such other work; and
 - 2. Environmental Remediator may make a claim therefor as provided in Article 9 if Environmental Remediator believes that such performance will involve additional expense to Environmental Remediator or require additional time and the parties are unable to agree as to the amount or extent thereof.
- B. Environmental Remediator shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other Remediation and shall properly connect and coordinate the Construction with theirs. Unless otherwise provided in the Contract Documents, Environmental Remediator shall do all cutting, fitting and patching of the Construction that may be required to make its several parts come together properly and integrate with such other Remediation. Environmental Remediator shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose Construction will be affected. The duties and responsibilities of Environmental Remediator under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Environmental Remediator in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of the Remediation depends upon work performed or services provided by others under this Article 7, Environmental Remediator shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of the Remediation. Environmental Remediator's failure so to report will constitute an acceptance of such other work as fit and proper for integration with the Remediation except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibility will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Environmental Remediator:
1. designate in writing a person to act as Owner’s Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner’s policies, make decisions with respect to performance of the Remediation, and shall provide such other services as may be agreed upon;
 2. provide such legal services as Owner may require with regard to legal issues pertaining to the Project, including any that may be raised by Environmental Remediator;
 3. if requested in writing by Environmental Remediator, furnish reasonable evidence satisfactory to Environmental Remediator, that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Environmental Remediator is not required to commence or continue any Remediation, or may, if such evidence is not presented within a reasonable time, suspend Remediation upon 15 days notice to the Owner;
 4. make payments to Environmental Remediator promptly when they are due as provided in paragraphs 13.03 and 13.08;
 5. furnish lands and easements as set forth in paragraph 4.01.A;
 6. take appropriate action regarding permits pursuant to paragraph 6.08.
 7. furnish to Environmental Remediator, as required for performance of Environmental Remediator’s Services the following, all of which Environmental Remediator may use and rely upon in performing services under this Agreement:
 - a. environmental assessment and impact statements;

- b. property, boundary, easement, right-of-way, topographic and utility surveys;
 - c. property descriptions;
 - d. zoning, deed and other land use restrictions;
 - e. engineering surveys to establish reference points for Remediation that are necessary to enable Environmental Remediator to proceed with the Remediation;
 - f. assistance to Environmental Remediator in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - g. permits, licenses, and approvals of government authorities which Owner is specifically required to obtain by the Contract Documents;
 - h. all subsurface data at or contiguous to the Site which Owner may have obtained;
 - i. information required to be provided by Owner under Laws or Regulations, including but not limited to all applicable OSHA regulations (specifically including 29 CFR 1910.120(b)(1)(iv) and 1926.65(b)(1)(iv)); and
 - j. such other data, analyses and other information in the Owner's possession or control that may assist Environmental Remediator in performing its obligations under the Contract Documents.
8. review submittals subject to Owner review pursuant to paragraph 6.17.A;
9. provide information known to or in the possession of Owner relating to the presence of Contaminants;
10. as the person or entity with legal title to the Contaminants, have a representative available to sign all contracts, certifications, manifests, and all other documents associated with arranging for all transportation, treatment and disposal, or handling of Contaminants, identified in the Contract Documents or encountered on the Site by Environmental Remediator in connection with performance of the Remediation, including investigation derived wastes;
11. in jurisdictions where legal or statutory title remains with the Owner, Owner may authorize Environmental Remediator to sign Hazardous Wastes manifests and other shipping documents as an agent for Owner, by signing "On behalf of (Owner's Name)," for the purpose of expediting off-site transportation of Contaminants;

12. unless otherwise required by Laws and Regulations or set forth in the Contract Documents, accurately locate, horizontally and vertically, and prominently mark any buried or concealed pipes, tanks, cables, utilities, or other manmade obstructions that may affect or be affected by Environmental Remediator's services. Environmental Remediator shall be entitled to rely on such information; and
13. report to the appropriate Federal, state, or local public agencies, as required, any conditions at the Site that may present a potential danger to public health, safety, or the environment.

8.02 *Insurance*

- A. Owner's responsibilities to purchase and maintain liability and property insurance are set forth in Article 5.

8.03 *Limitations on Owner's Responsibilities*

- A. Owner shall not supervise, direct or have control or authority over, nor be responsible for, Environmental Remediator's means, methods, techniques, sequences or procedures of Construction or the safety precautions and programs incident thereto, or for any failure of Environmental Remediator to comply with Laws or Regulations applicable to the furnishing or performance of the Remediation. Owner will not be responsible for Environmental Remediator's failure to perform or furnish the Remediation in accordance with the Contract Documents.

8.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect of undisclosed Contaminants and existing conditions uncovered or revealed at the Site is set forth in paragraph 4.04.

8.05 *Resident Project Representation*

- A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

8.06 *Owner's Consultant*

- A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Environmental Remediator, unless so provided in the Supplementary Conditions.

ARTICLE 9 – CHANGES IN THE REMEDIATION; CLAIMS

9.01 *Authorized Changes in the Remediation*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Remediation within the general scope of the Contract by a Change Order or a Change Directive. Upon receipt of any such document, Environmental Remediator shall promptly proceed with the Remediation involved which will be performed under the applicable provisions of the Contract Documents (except as otherwise specifically provided). However, Owner does not have the right to order additions or revisions which would require Environmental Remediator to deal with Contaminants, contaminated areas, or contaminated resources not disclosed in the Contract Documents in existence as of the date of receipt of Proposals.

9.02 *Unauthorized Changes in the Remediation*

- A. Environmental Remediator will not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Remediation performed that is not required by the Contract Documents as they may be amended as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 *Claims*

- A. If Owner and Environmental Remediator are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times or both, that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a claim will be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.
- B. Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by paragraph 9.03.A.
- C. If Environmental Remediator has given notice of claim pursuant to paragraph 9.03.A., Owner shall render a decision on the claim not more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless Environmental Remediator gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.
- D. If Owner has given the notice of claim pursuant to paragraph 9.03.A., Environmental Remediator shall render a decision on the claim not more than 60 days after the receipt

of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless Owner gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

E. The time limits of paragraphs 9.03.B, C and D may be extended by mutual agreement.

9.04 *Execution of Change Orders*

A. Owner and Environmental Remediator shall execute appropriate Change Orders covering changes in:

1. the Remediation which are (a) ordered by Owner under paragraph 9.01, (b) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Construction under paragraph 12.09 or (c) agreed to by the parties; and
2. the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Remediation actually performed in accordance with a Change Directive.

9.05 *Notice to Sureties*

A. If notice of any change affecting the general scope of the Remediation or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Environmental Remediator's responsibility.

ARTICLE 10 – COST OF REMEDIATION; CASH ALLOWANCES; UNIT PRICE WORK

10.01 *Cost of the Remediation*

A. **Costs Included:** The term Cost of the Remediation means the sum of all costs necessarily incurred and paid by Environmental Remediator in the proper performance of the Remediation. When the value of any Remediation covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Remediation, the cost to be reimbursed to Environmental Remediator will be only those additional or incremental costs required because of the Change in the Remediation or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. payroll costs for employees in the direct employ of Environmental Remediator in the performance of the Remediation under schedules of job classifications agreed upon by Owner and Environmental Remediator.

- a. Such employees will include without limitation superintendents, foremen and other personnel employed full-time at the Site. Payroll costs for employees not employed full-time on the Site will be apportioned on the basis of their time spent on the Site. Payroll costs will include, but not be limited to, salaries and wages plus the cost of fringe benefits which will include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and any applicable holiday pay. The expenses of performing Remediation after regular working hours, on Saturday, Sunday or legal holidays, will be included in the above costs to the extent authorized by Owner.
 - b. Such employees will also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Environmental Remediator will be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.
2. cost of all materials and equipment furnished and incorporated in the Remediation, including costs of their transportation and storage and Suppliers' field services required in connection with them. All cash discounts will accrue to Environmental Remediator unless Owner deposits funds with Environmental Remediator with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Environmental Remediator will make provisions so that they may be obtained.
3. payments made by Environmental Remediator to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Remediation performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of Construction plus a fee, the Subcontractor's cost of the Construction Remediation and fee shall be determined in the same manner as Environmental Remediator's Cost of Remediation and fee.
4. payments made by Environmental Remediator for Professional Services
5. costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Remediation.
6. supplemental costs, including the following items:
 - a. the proportion of necessary transportation, travel and subsistence expenses of Environmental Remediator's employees incurred in discharging duties connected with the Remediation.

- b. cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in performing the Remediation, and cost, less market value of such items used but not consumed which remain the property of Environmental Remediator.
- c. rentals of all equipment and machinery and their parts, whether rented from Environmental Remediator or others according to rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts will cease when their use is no longer necessary for the Remediation.
- d. sales, consumer, use or similar taxes related to the Remediation, for which Environmental Remediator is liable, imposed by Laws or Regulations.
- e. deposits lost for causes other than negligence of Environmental Remediator, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. losses, damages and related expenses caused by damage to the Remediation not compensated by insurance or otherwise, sustained by Environmental Remediator in connection with the furnishing and performance of the Remediation provided they have resulted from causes other than the negligence of Environmental Remediator, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses will be included in the Cost of the Remediation for the purpose of determining Environmental Remediator's fee.
- g. the cost of utilities, fuel and sanitary facilities at the Site.
- h. minor expenses such as long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Remediation.
- i. cost of premiums for all Bonds and insurance that Environmental Remediator is required to purchase and maintain.

B. Costs Excluded: The term Cost of the Remediation will not include any of the following:

1. payroll costs and other compensation of Environmental Remediator's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Environmental Remediator whether at the Site or in Environmental Remediator's principal or a branch office for general administration of the Remediation and not specifically included in the agreed-upon schedule of job classifications referred to in paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Environmental Remediator's fee.
 2. expenses of Environmental Remediator's principal and branch offices other than Environmental Remediator's office at the Site.
 3. any part of Environmental Remediator's capital expenses, including interest on Environmental Remediator's capital employed for the Remediation and charges against Environmental Remediator for delinquent payments.
 4. costs due to the negligence of Environmental Remediator, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Remediation, disposal of materials or equipment wrongly supplied and making good any damage to property.
 5. other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.
- C. Environmental Remediator's Fee: When the value of the Remediation covered by a Change Order is determined on the basis of Cost of the Remediation, Environmental Remediator's fee shall be determined as set forth in paragraph 11.01.C.
- D. Documentation: Whenever the cost of any Remediation is to be determined under paragraphs 10.01.A and 10.01.B, Environmental Remediator will establish and maintain records of such costs according to generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 *Cash Allowances*

- A. The Contract Price includes all allowances so named in the Contract Documents. Environmental Remediator shall cause the Remediation so covered to be performed for such sums as may be acceptable to Owner. Environmental Remediator agrees that:
1. the allowances include the cost to Environmental Remediator (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. except as set forth in the Contract Documents, Environmental Remediator's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Environmental Remediator on account of Remediation covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 *Unit Prices*

- A. Where the Contract Documents provide that all or part of the Remediation is to be paid on the basis of Unit Prices, initially the Contract Price will be deemed to include for all of the Unit Price Remediation an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Remediation times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Remediation are not guaranteed and are solely for the purpose of comparison of Proposals or determining an initial Contract Price, or both.
- C. Determinations of the actual quantities and classifications of Unit Price Remediation performed by Environmental Remediator will be made by Owner.
- D. Each unit price will be deemed to include an amount considered by Environmental Remediator to be adequate to cover Environmental Remediator's overhead and profit for each separately identified item.
- E. The unit price of an item of Unit Price Remediation may be subject to adjustment if:
1. the total estimated cost of a particular item of Unit Price Remediation as stated in the Agreement amounts to 10 percent or more of the initial Contract Price; and
 2. the actual quantity of that particular item of Unit Price Remediation performed by Environmental Remediator differs by more than 15 percent from the estimated quantity of such item indicated in the Agreement; and
 3. Environmental Remediator believes that Environmental Remediator is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price.
- F. If the parties are unable to agree as to the amount of any increase or decrease, then either party may make a claim according to Article 9.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.
- B. The value of any Remediation covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 1. where the Remediation involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or
 2. where the Remediation involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.01.C.2); or
 3. where the Remediation involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Remediation (determined as provided in paragraph 10.01) plus a Environmental Remediator's Fee for overhead and profit (determined as provided in paragraph 11.01.C).
- C. Environmental Remediator's Fee: The Environmental Remediator's fee for overhead and profit on Change Orders shall be determined as follows:
 1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Remediation:
 - a. for costs incurred under paragraphs 10.01.A.1 and 10.01.A.2, the Environmental Remediator's fee shall be 15 percent;
 - b. for costs incurred under paragraph 10.01.A.3, 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Environmental Remediator's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Remediation plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Remediation, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and

Environmental Remediator will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. the amount of credit to be allowed by Environmental Remediator to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Environmental Remediator's fee by an amount equal to five percent of such net decrease; and
- e. when both additions and credits are involved in any one change, the adjustment in Environmental Remediator's fee shall be computed on the basis of the net change in accordance with paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 *Change of Contract Times*

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any claim for an adjustment of the Contract Times (or Milestones) will be based on written notice under paragraph 9.03.A.
- B. If Environmental Remediator is delayed in the performance or progress of the Remediation by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Environmental Remediator, then Environmental Remediator shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Environmental Remediator's ability to complete the Remediation within the Contract Times. Such an adjustment shall be Environmental Remediator's sole and exclusive remedy for the delays described in this paragraph 11.02.B.
- C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Remediation, then Environmental Remediator shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Environmental Remediator's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Environmental Remediator's ability to complete the Remediation within the Contract Times.
- D. Owner and Owner's Consultant shall not be liable to Environmental Remediator for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Environmental Remediator on or in connection with any other project or anticipated project.
- E. Environmental Remediator shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Environmental Remediator. Delays

attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Environmental Remediator.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

- A. Owner shall give Environmental Remediator prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

- A. Owner, Owner's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and Construction at reasonable times for their observation, inspecting and testing. Environmental Remediator shall provide them proper and safe conditions for such access and advise them of Environmental Remediator's Site safety procedures and programs so that they may comply with them.

12.03 Tests and Inspections

- A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Environmental Remediator shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all their costs, and furnish Owner the required certificates of inspection, testing or approval.
- B. Environmental Remediator shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required by the Contract Documents for Owner's acceptance of materials or equipment to be incorporated in the Construction or of materials, mix designs, or equipment submitted for approval prior to Environmental Remediator's purchase of them for incorporation in the Construction.
- C. Environmental Remediator shall give Owner reasonable notice of the planned schedule for all required inspections, tests or approvals.
- D. If any Construction (or the construction work of others) that is required to be inspected, tested or approved is covered by Environmental Remediator without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation. Environmental Remediator shall be responsible for Uncovering Costs unless Environmental Remediator has given Owner timely notice of Environmental Remediator's intention to cover it and Owner has not acted with reasonable promptness in response to such notice.

12.04 *Uncovering Construction*

- A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Environmental Remediator's expense.
- B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Environmental Remediator, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment.
 1. If it is found that such Construction is defective:
 - a. Environmental Remediator shall be responsible for Uncovering Costs, and
 - b. Owner shall be entitled to an appropriate decrease in the Contract Price.
 2. If it is found that such Construction is not defective, Environmental Remediator will be allowed an increase in the Contract Price for the resulting Uncovering Costs or an extension of the Contract Times (or Milestones), or both.
 3. If the parties are unable to agree as to the amount or extent of Uncovering Costs, Environmental Remediator or Owner may make a claim therefor as provided in Article 9.

12.05 *Owner May Stop the Construction*

- A. If the Construction is defective, or Environmental Remediator fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Environmental Remediator to stop any or all of the Construction, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Environmental Remediator or any other party.

12.06 *Correction or Removal of Defective Construction*

- A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Environmental Remediator shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with nondefective Construction. Environmental Remediator shall bear all direct costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.07 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Remediation or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Construction is found to be defective, Environmental Remediator shall promptly, without cost to Owner and according to Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting from such defective Construction. If Environmental Remediator does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all direct costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Environmental Remediator.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Remediation, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to corrected Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 *Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Environmental Remediator shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner will be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Environmental Remediator to Owner.

12.09 *Owner May Correct Defective Construction*

- A. If Environmental Remediator fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner according to paragraphs 12.06.A or 12.07.A, or if Environmental Remediator fails to perform the Construction according to the Contract Documents, or if Environmental Remediator fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Environmental Remediator, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Environmental Remediator from all or part of the Site, take possession of all or part of the Construction, and suspend Environmental Remediator's services related to that Construction, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Environmental Remediator but which are stored elsewhere. Environmental Remediator shall allow Owner, Owner's Representatives, agents and employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All costs, losses, and damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Environmental Remediator and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner will be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to its amount, Owner may make a claim under Article 9.
- D. Environmental Remediator will not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Remediation attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO ENVIRONMENTAL REMEDIATOR AND COMPLETION

13.01 *Schedule of Values*

- A. The Schedule of Values as provided in paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Remediation will be based on the number of units completed.

13.02 *Application for Progress Payment*

- A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Environmental Remediator shall submit to Owner for review an Application for Payment filled out

and signed by Environmental Remediator covering the Remediation completed as of the date indicated on the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Remediation but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest in such materials and equipment, all of which will be satisfactory to Owner.

- B. Beginning with the second Application for Payment, each Application shall include an affidavit of Environmental Remediator stating that all previous progress payments received on account of the Remediation have been applied on account to discharge Environmental Remediator's legitimate obligations associated with prior Applications for Payment.
- C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.03 *Progress Payments*

- A. Progress payments shall be made by the Owner to the Environmental Remediator according to the following procedure:
 - 1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Environmental Remediator indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Environmental Remediator.
 - 2. If the Owner should fail to pay the Environmental Remediator at the time the payment of any amount becomes due, then Environmental Remediator may, at any time thereafter, upon serving written notice that Environmental Remediator will stop the Remediation within seven days after receipt of the notice by the Owner, and after such seven day period, stop the Remediation until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of the Owner.
 - 3. Payments due but unpaid will bear interest at the rate specified in the Agreement.
 - 4. No Progress Payment nor any partial or entire use or occupancy of the Project by the Owner will constitute an acceptance of any Remediation not according to the Contract Documents.

- B. Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:
1. the Construction is defective, or completed Construction has been damaged by Environmental Remediator and requires correction or replacement; or
 2. the Contract Price has been reduced by Change Order; or
 3. owner has been required to correct defective Construction or complete Construction according to paragraph 12.09.A; or
 4. owner has actual knowledge of the occurrence of any of the events enumerated in paragraph 14.02.A; or
 5. claims have been made against Owner on account of Environmental Remediator's performance or furnishing of the Remediation; or
 6. liens have been filed in connection with the Remediation, except where Environmental Remediator has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 7. there are other items entitling Owner to a set-off against the amount for which application is made.
- C. If Owner refuses to make payment of the full amount requested by Environmental Remediator, Owner must give Environmental Remediator immediate written notice stating the reasons for such action and promptly pay Environmental Remediator any amount remaining after deduction of the amount withheld. Owner shall promptly pay Environmental Remediator the amount withheld or any adjustment thereto agreed to when Environmental Remediator corrects to Owner's satisfaction the reason for such action.

13.04 *Environmental Remediator's Warranty of Title*

- A. Environmental Remediator warrants and guarantees that title to all Construction materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 *Substantial Completion*

- A. When Environmental Remediator considers the Remediation ready for its intended use, Environmental Remediator shall notify Owner in writing that the Remediation is substantially complete (except for items specifically listed by Environmental Remediator as incomplete) and request that Owner issue a certificate of Substantial

Completion. Promptly thereafter, Owner and Environmental Remediator shall make an inspection of the Remediation to determine the status of completion. If Owner does not consider the Remediation substantially complete, Owner will notify Environmental Remediator in writing giving its reasons. If Owner considers the Remediation substantially complete, Owner will prepare and deliver to Environmental Remediator a certificate of Substantial Completion which shall fix the date of Substantial Completion. There will be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Environmental Remediator a written determination as to division of responsibilities pending final payment between Owner and Environmental Remediator with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

- B. Owner will have the right to exclude Environmental Remediator from the Site after the date of Substantial Completion, but Owner will allow Environmental Remediator reasonable access to complete or correct items on the list of items to be completed.

13.06 *Partial Utilization*

- A. Prior to Substantial Completion of the Remediation, Owner may use or occupy any substantially completed part of the Remediation which (1) has specifically been so identified for early use in the Contract Documents, or (2) Owner and Environmental Remediator agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significantly interfering with Environmental Remediator's performance of the remaining Construction. The procedures to allow for this use are:
 - 1. At any time during Construction, Owner may request Environmental Remediator in writing to permit Owner to use or occupy any part of the Construction which Owner believes to be ready for its intended use and substantially complete. Within a reasonable time after such request, Owner and Environmental Remediator will make an inspection of that part of the Construction to determine its status of completion. If Environmental Remediator agrees that such part of the Construction is substantially complete, Environmental Remediator will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction.
 - 2. At any time during Construction, Environmental Remediator may notify Owner in writing that Environmental Remediator considers any part of the Construction ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Within a reasonable time after such requests, Owner and Environmental Remediator will make an inspection of that part of the Construction to determine its status of completion. If Owner does not consider that part of the Construction to be substantially complete, Owner will notify Environmental Remediator in writing giving its reasons. If Owner considers that part of the Construction to be

substantially complete, the provisions of paragraph 13.05 will apply regarding the issuing of a certificate of Substantial Completion of that part of the Construction and the division of responsibility involving such work and its access.

- B. No use or occupancy of part of the Construction will be accomplished prior to complying with the property insurance requirements of paragraph 5.09.

13.07 *Final Inspection*

- A. Upon written notice from Environmental Remediator that the entire Construction or an agreed portion thereof is complete, Owner will make a final inspection with Environmental Remediator and will notify Environmental Remediator in writing of all particulars in which this inspection reveals that the Construction is incomplete or defective. Environmental Remediator shall immediately take such measures as are necessary to complete such Construction or remedy such deficiencies.

13.08 *Final Application for Payment*

A. Application for Payment

1. After Environmental Remediator has completed all such corrections to the satisfaction of Owner and delivered according to the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12) and other documents, Environmental Remediator may make application for final payment following the procedure for progress payments.
2. The final Application for Payment will be accompanied (unless previously delivered) by: (a) all documentation called for in the Contract Documents, (b) consent of the surety, if any, to final payment, and (c) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens filed in connection with the Remediation.
3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Environmental Remediator may furnish receipts or releases in full and an affidavit of Environmental Remediator that: (a) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Remediation for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Environmental Remediator may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. If Owner is satisfied that the Remediation has been completed and Environmental Remediator's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Environmental Remediator that the Remediation is acceptable. Otherwise, Owner will return the Application to Environmental Remediator, indicating in writing the reasons for refusing to process final payment, in which case Environmental Remediator shall make the necessary corrections and resubmit the Application.
- C. Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Environmental Remediator.

13.09 *Final Completion Delayed*

- A. If, through no fault of Environmental Remediator, final completion of the Remediation is significantly delayed, Owner shall, upon receipt of Environmental Remediator's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Remediation fully completed and accepted. If the remaining balance to be held by Owner for Remediation not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Remediation fully completed and accepted shall be submitted by Environmental Remediator to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 - 1. a waiver of all Claims by Owner against Environmental Remediator, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection under paragraph 13.07, from failure to provide Professional Services consistent with the standard of care of paragraph 6.01.A.1, from failure to comply with the Contract Documents, including any special guarantees, or from Environmental Remediator's continuing obligations under the Contract Documents; and
 - 2. a waiver of all payment claims by Environmental Remediator against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF REMEDIATION AND TERMINATION

14.01 *Owner May Suspend Remediation*

- A. At any time and without cause, Owner may suspend any or all of the Remediation for a period of not more than 90 days by notice in writing to Environmental Remediator which will fix the date on which Remediation will be resumed. Environmental Remediator shall resume the Remediation on the date so fixed. Environmental Remediator will be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Environmental Remediator makes a claim therefor as provided in Article 9.

14.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events justifies termination for cause:
 - 1. Environmental Remediator's repeated failure to perform the Remediation according to the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.06.A, as adjusted from time to time pursuant to paragraph 6.05);
 - 2. Environmental Remediator's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 3. Environmental Remediator's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in paragraph 14.02.A. occurs, Owner may, after giving Environmental Remediator (and the surety, if any) 30 days' written notice, terminate the services of Environmental Remediator, take possession of any completed Drawings and Specifications prepared by or for Environmental Remediator (subject to the indemnification provisions of paragraph 3.05.A), exclude Environmental Remediator from the Site and take possession of the Remediation, incorporate in the Remediation all materials and equipment stored at the Site or for which Owner has paid Environmental Remediator but which are stored elsewhere, and finish the Remediation as Owner may deem expedient. In such case Environmental Remediator will not be entitled to receive any further payment until the Remediation is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Remediation (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Environmental Remediator. If such costs, losses and damages exceed such unpaid balance, Environmental Remediator shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a

Change Order, provided that when exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Remediation to be performed.

- C. Notwithstanding paragraph 14.02.B, Environmental Remediator's services will not be terminated if Environmental Remediator begins, within seven days of receipt of such notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice. However, if and to the extent such failure cannot be reasonably cured within such 30-day period, and if Environmental Remediator has diligently attempted to cure such failure and thereafter continues diligently to cure it, then the cure period under this paragraph will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- D. Where Environmental Remediator's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Environmental Remediator then existing or which may thereafter accrue. Any retention or payment of moneys due Environmental Remediator by Owner will not release Environmental Remediator from liability.

14.03 *Owner May Terminate for Convenience*

- A. Upon seven days' written notice to Environmental Remediator, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Environmental Remediator will be paid (without duplication of any items) for:
 - 1. Remediation executed according to the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Remediation;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment required by the Contract Documents in connection with uncompleted Remediation, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. amounts paid in settlement of terminated contracts with Subcontractors, Engineers, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of such contracts); and
 - 4. Reasonable expenses directly attributable to termination.
- B. Except as provided in paragraph 14.03.A, Environmental Remediator shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 *Environmental Remediator May Stop Remediation or Terminate*

- A. If, through no act or fault of Environmental Remediator, the Remediation is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Environmental Remediator any sum finally determined to be due, or Owner fails for 30 days to furnish lands and access pursuant to paragraph 4.01.A, or Owner repeatedly fails to perform a material obligation of the Contract, then Environmental Remediator may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 14.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Environmental Remediator any sum finally determined to be due, Environmental Remediator may upon seven day's written notice to Owner stop the Remediation until payment is made of all such amounts due Environmental Remediator, including interest thereon. The provisions of this paragraph 14.04.A are not intended to preclude Environmental Remediator from making claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Environmental Remediator's stopping Remediation as permitted by this paragraph.

- B. If Environmental Remediator encounters Contaminants different in type or extent from those originally represented by Owner, Environmental Remediator may, at its option, terminate the Contract and be paid for those items described in paragraph 14.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, Environmental Remediator may suspend performance under this Contract pending negotiation of a satisfactory Change Order to provide for the newly discovered existing conditions.

14.05 *Obligations Upon Termination*

- A. In the event of termination under paragraph 14.03 or 14.04:
 - 1. Environmental Remediator shall promptly cease operations and:
 - a. take actions necessary, or that Owner may direct, for the protection and preservation of the Remediation; and
 - b. except for Remediation directed to be performed prior to the effective date of termination, terminate all existing subcontracts and purchase orders, and enter into no further subcontracts or purchase orders.

 - 2. Owner shall promptly take such actions as are reasonably necessary to close out the Contract, including the making of final payment under paragraph 13.09.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 Methods and Procedures

- A. Dispute resolution methods and procedures, if any, will be as set forth in Exhibit GC-B. If no such agreement on the method and procedure for resolving such disputes has been set forth, Owner and Environmental Remediator may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 Giving Notice

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

16.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions, and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
 - 1. Laws or Regulations; or
 - 2. any special warranty or guarantees; or
 - 3. other provisions of the Contract Documents.
- B. The provisions of this paragraph 16.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 *Survival of Obligations*

- A. All representations, indemnifications, and warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Remediation and termination or completion of the Contract.

16.05 *Waiver of Consequential Damages*

- A. To the fullest extent permitted by law, and except as specifically provided to the contrary herein, Environmental Remediator and Owner waive Claims against each other for special, incidental and consequential damages arising out of this Agreement. This mutual waiver includes, but is not limited to:
 - 1. damages incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - 2. damages incurred by Environmental Remediator for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Remediation.
- B. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination according to Article 14. Nothing contained in this paragraph 16.05 will be deemed to preclude an award of liquidated damages, when applicable, according to the requirements of the Contract Documents.

16.06 *No Third-Party Beneficiaries*

- A. This Agreement is not intended to, and does not, create any rights or benefits to individuals or entities other than Owner and Environmental Remediator.

16.07 *No Waiver By Non-Enforcement*

- A. Non-enforcement of any provision by either party will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or the remainder of the Contract Documents.

16.08 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

16.09 *Limitation of Liability*

- A. If and to the extent that Owner and Environmental Remediator have agreed to limiting Environmental Remediator's liability, that agreement is in Exhibit GC-C, Limitation of Liability, to be attached hereto and incorporated herein.

This is **EXHIBIT GC-A**, referred to in and part of the **General Conditions between Owner and Environmental Remediator** dated _____.

Insurance

Article 5.04 is amended to include the following agreement of the parties.

A5.04.A *Environmental Remediator shall purchase and maintain insurance with minimum limits of liability as follows:*

1. Workers' Compensation: Statutory
2. Employer's Liability:
 - a) Each Accident: \$ _____
 - b) Disease, Policy Limit: \$ _____
 - c) Disease, Each Employee: \$ _____
3. Commercial General Liability:
 - a) Each Occurrence (Bodily Injury and Property Damage): \$ _____
 - b) General Aggregate: \$ _____
4. Excess or Umbrella Liability:
 - a) Each Occurrence: \$ _____
 - b) General Aggregate: \$ _____
5. Automobile Liability
Combined Single Limit (Bodily Injury and Property Damage):
\$ _____ each accident
6. Contractor's Pollution Liability
Each Claim \$ _____
Aggregate \$ _____

7. Other (specify):

\$ _____

This is **EXHIBIT GC-B**, referred to in and part of the **General Conditions between Owner and Environmental Remediator** dated _____.

Dispute Resolution

[NOTE TO USER: Select one of the two alternatives provided, and delete the other. If neither is selected—that is, if this Exhibit GC-B is not used—then disputes will be resolved pursuant to the terms of Paragraph 15.01 of the General Conditions.]

B15.01 Dispute Resolution

A. ***Mediation:*** Owner and Environmental Remediator agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by ***[here insert name of mediator, or mediation service, or indicate “qualified mediator to be determined by mutual agreement”]***. Owner and Environmental Remediator agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

[or]

A. ***Arbitration:*** All Disputes between Owner and Environmental Remediator shall be settled by arbitration in accordance with the ***[here insert the name of a specified arbitration service or organization]*** rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this paragraph will be specifically enforceable under prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the ***[specified arbitration service or organization]***. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$_____ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than

\$_____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.

3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the contract provisions deemed applicable and relied on in making the award.
4. The award rendered by the arbitrators will be consistent with the contract between the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
5. If a Dispute in question between Owner and Environmental Remediator involves the work or services of a third party under contract to either the Owner or Environmental Remediator (each such third party a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Environmental Remediator may join such Joinable Party as a party to the arbitration between Owner and Environmental Remediator hereunder. Nothing in this paragraph nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Environmental Remediator that does not otherwise exist.

This is **EXHIBIT GC-C**, referred to in and part of the **General Conditions between Owner and Environmental Remediator** dated _____.

Limitation of Liability

Paragraph 16.09 of the General Conditions is supplemented to include the following agreement of the parties:

16.09.A *Limitation of Environmental Remediator's Liability*

[NOTE: Select one of the three alternatives listed below for 16.09.A.1. Delete the other two]

1. ***Environmental Remediator's Liability Limited to Amount of Environmental Remediator's Compensation.*** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Environmental Remediator agree, as between them, that the total aggregate liability of Environmental Remediator and its officers, directors, members, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses whatsoever, including attorneys' fees, arising out of the Project or the Agreement from any cause or causes will not exceed the total compensation received by Environmental Remediator under this Agreement. Such cause or causes include, but are not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty of Environmental Remediator or its officers, directors, members, partners, employees, agents, Subcontractors or Suppliers.

[or]

1. ***Environmental Remediator's Liability Limited to Amount of Insurance Proceeds.*** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Environmental Remediator agree, as between them, that the total aggregate liability of Environmental Remediator and its officers, directors, members, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses whatsoever, including attorney's fees, arising out of the Project or the Agreement from any cause or causes (collectively "Claims") shall not exceed the total available insurance proceeds paid on behalf of or to Environmental Remediator by Environmental Remediator's insurers in settlement or satisfaction of any such Claims under the terms and conditions of Environmental Remediator's applicable insurance policies. For purposes of this provision, "total available insurance proceeds" for each Claim means any limits under the applicable Environmental Remediator insurance policy that remains at the time of settlement or satisfaction of the Claims, which will not exceed in any event the limits set forth in the Contract Documents, less any

settlement or satisfaction of all previously resolved Claims and any fees, costs and expenses of investigation, claims adjustment, defense and appeal incurred up to the time of settlement or satisfaction of all Claims.

[or]

1. ***Environmental Remediator's Liability Limited to Amount of \$_____.***

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Environmental Remediator agree, as between them, that the total aggregate liability, of Environmental Remediator and its officers, directors, members, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses (including attorney's fees) whatsoever arising out of the Project or the Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or breach of warranty express or implied of Environmental Remediator or Environmental Remediator's officers, directors, members, partners, employees, agents, or Environmental Remediator's Consultants, or any of them.

SECTION 00800

SUPPLEMENTARY CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

GUIDE TO THE PREPARATION OF SUPPLEMENTARY CONDITIONS

Prepared by



Issued and Published Jointly by



This **Guide to the Preparation of Supplementary Conditions** has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC® C-700, 2013 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested language contained in the **Guide to the Preparation of Instructions to Bidders** (EJCDC® C-200, 2013 Edition) is also carefully integrated with the suggested language of this document. The full EJCDC Construction series of documents is discussed in the **Commentary on the 2013 EJCDC Construction Documents** (EJCDC® C-001, 2013 Edition).

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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I. INTRODUCTION

A. General

The Engineers Joint Contract Documents Committee® (EJCDC®) has prepared and publishes standard contract forms for construction contracts, as well as bidding-related documents. The principal forms are listed in Table 1. EJCDC has also prepared other documents that may be useful in preparing construction contract documents. Some of the principal ones are listed in Table 2. For the most recent editions of these forms, guides, and other documents, please refer to EJCDC's website at www.ejcdc.org.

Table 1 Principal EJCDC Standard Forms and Related Guides for Construction Contracts		
Name	Number	Short Title/Abbreviation
Suggested Instructions to Bidders for Construction Contracts	C-200	Instructions/I
Bid Form for Construction Contracts	C-410	Bid Form/BF
Agreement between Owner and Contractor for Construction Contract (Stipulated Price)	C-520	Stipulated Price Agreement/A
Agreement between Owner and Contractor for Construction Contract (Cost-Plus)	C-525	Cost-Plus Agreement/A
Standard General Conditions of the Construction Contract	C-700	General Conditions/GC
Guide to the Preparation of Supplementary Conditions	C-800	Supplementary Conditions/SC

Table 2 Principal EJCDC Documents Relating to Preparation of Construction Documents		
Name	Number	Short Title
Commentary on the 2013 EJCDC Construction Documents	C-001	Commentary
Uniform Location of Subject Matter	N-122	Locator Guide
Bidding Procedures and Construction Contract Documents	C-050	Bidding Procedures
Engineer's Letter to Owner Requesting Instructions Concerning Bonds and Insurance	C-051	Engineer's Letter to Owner Concerning Bonds and Insurance
Owner's Instructions to Engineer Concerning Bonds and Insurance	C-052	Owner's Instructions Concerning Bonds and Insurance

B. *Mandatory Supplementary Conditions*

Several provisions of the General Conditions expressly indicate that essential Project-specific information will be set out in a corresponding Supplementary Condition. For example, Paragraph 6.03.I of the General Conditions indicates that required insurance coverage limits will be specified in the Supplementary Conditions. Every EJCDC-based construction contract should include, at a minimum, the following Supplementary Conditions:

1. One of the suggested Paragraphs SC-5.03, concerning reports and drawings of conditions at the Site, and any Technical Data in the reports and drawings on whose accuracy the Contractor may rely;
2. One of the suggested Paragraphs SC-5.06, concerning reports and drawings regarding Hazardous Environmental Conditions at the Site, and any Technical Data in those reports and drawings on whose accuracy the Contractor may rely;
3. Those portions of SC-6.03 identifying specific insurance coverage requirements; and
4. One of the two alternatives presented in SC-10.03 (either the Engineer will provide Resident Project Representative services on the Project, with specific authority and responsibilities, or Engineer will not provide Resident Project Representative services).

Other suggested Supplementary Conditions are mandatory under specific circumstances: for example, on projects in which the Contractor will be responsible for compliance with Owner's safety program, SC-7.12 would be mandatory.

C. *Relationship of Supplementary Conditions to Other Contract Documents*

Supplementary Conditions are modifications to the General Conditions—additions, deletions, changes. This is as the term is defined by EJCDC and the Construction Specification Institute (CSI). Other organizations use their supplementary conditions to modify a broader range of contract documents, such as agreement forms and standard specifications.

This Guide and the other Construction-related documents prepared and issued by EJCDC assume use of the CSI MasterFormat™ concept, which provides an organizational format for location of all documentary information for a construction project: Bidding Requirements, contract forms (Agreement, Bonds, and certificates), General Conditions, Supplementary Conditions, and Specifications. Under the CSI MasterFormat™, the last grouping, Specifications, is divided into 49 Divisions, the first of which, Division 01, is entitled “General Requirements.”

The standard fundamental provisions affecting the rights and duties of the parties appear in the General Conditions. Language to modify the fundamental relationships between the parties, supplement the framework set forth in the General Conditions, or change the language of the General Conditions, should appear in the Supplementary Conditions. Examples of this are a change in Contractor's Site responsibilities, and a supplemental clause specifying the details of insurance coverages and limits for the Project.

Price terms, monetary terms such as liquidated damages clauses, and completion dates should all be set forth in the Agreement (EJCDC® C-520—Stipulated Sum or C-525—Cost-Plus), and should not be included in the Supplementary Conditions.

The substance of the General Requirements (Division 01 of the Specifications) falls generally into three categories: (1) administrative requirements, such as summary of work, allowances, coordination, alternatives (materials, equipment, or price), product options, project meetings, and project close-out; (2) work-related provisions, such as temporary facilities, field testing, and

start-up; and (3) general provisions applicable to more than one section in Divisions 02 through 49.

D. *Arrangement of Subject Matter*

This Guide is arranged in the same order as the 2013 edition of the General Conditions, and the paragraphs herein bear comparable addresses to those of the General Conditions but with the prefix “SC.” A discussion of the purpose and function of these suggested Supplementary Conditions is included in EJCDC® C-001, Commentary on the 2013 EJCDC Construction Documents.

E. *Use of this Guide*

The text presented in bold type in the remainder of this Guide is suggested language for some commonly used Supplementary Conditions. The drafter should bear in mind that most contractual provisions have important legal consequences. Consultation with legal counsel before finalization of any amendment or supplement is recommended.

Many sets of supplementary conditions examined by EJCDC contain typical or “boilerplate” provisions that have accumulated like moss over the years, appear to have no practical significance for the particular project, and may produce unintended and surprising legal consequences. Such provisions are usually there because someone saw similar terms in other contract documents and it “sounded good.” Selecting contract terms in that manner is not recommended. Provisions of the Supplementary Conditions should address a particular point in the General Conditions or cover a particular topic. The Supplementary Conditions should not be a repository for general language of vague meaning for which another location cannot be readily found.

This Guide assumes a general familiarity with the other Construction-related (C-series) documents prepared by EJCDC and, when drafting language, specific attention to them is encouraged. Standard documents or prescribed forms issued by governmental bodies and other owners may differ materially from the documents of EJCDC so that careful correlation of any amending or supplementing language is essential. The practice of stating that any provision in one document that is inconsistent with another is superseded, or that one document always takes precedence over another in the event of a conflict in language or requirements, is sometimes necessary, but generally discouraged. The resulting legal consequences of such provisions are frequently difficult to decipher and may be very different from what was anticipated.

The EJCDC General Conditions use carefully chosen language and set forth the basic responsibilities of the parties with respect to fundamental matters and legal consequences. Their provisions should be altered only where mandated by the specific requirements of a given project and the consequences of any modification are thoroughly understood.

Caution should be exercised when making any change in the standard documents. They have been carefully prepared, terms are used uniformly throughout and are consistent with the terms in other EJCDC documents. Their provisions have been carefully integrated, and are dependent on one another. A change in one document may necessitate a change in another, and a change in one paragraph may necessitate a change in other language of the same document. No change should be made until its full effect on the rest of the General Conditions and other Contract Documents has been considered.

Users must follow the instructions and restrictions regarding the use of this document that are set out in the License Agreement that accompanied the document at the time of purchase or

acquisition. To prepare this document for use on a specific project, after reviewing all instructions and explanatory text and notes, (1) remove the cover pages, this Introduction, Part II (Standard Prefatory Language and Traditional Format for Supplementary Conditions) and Part III (Alternative Format for Supplementary Conditions) (2) fill in Project-specific information and make revisions to the document, following the guidance in the explanatory text and notes, and the advice of legal counsel, and (3) delete the explanatory text and notes.

Lastly, remember that an engineer is neither qualified nor licensed to give advice to others on the legal consequences of contracts. All of the Contract Documents have important legal consequences. Owners should be encouraged to seek the advice of an attorney before accepting any modification of the printed forms, before the documents are sent out for bidding, and most assuredly before signing any agreement.

II. STANDARD PREFATORY LANGUAGE AND TRADITIONAL FORMAT FOR SUPPLEMENTARY CONDITIONS

Suggested format and wording conventions for Supplementary Conditions appear below.

A. *Table of Contents*

The inclusion of a table of contents will benefit the user of the Supplementary Conditions, especially if additional articles (beyond the 18 Articles of the General Conditions) are added for the purpose of including mandated or other provisions.

B. *Pagination*

If CSI's MasterFormat™, 2012 Edition, is being used for the Project Manual, consult MasterFormat™ for the appropriate section number and number the pages accordingly.

C. *Format for Complete Paragraph Change*

When completely superseding a paragraph of the General Conditions, the following language may be used:

SC 5.09.B Delete Paragraph 5.09.B in its entirety and insert the following in its place:

D. *Format for Change within a Paragraph*

When changing language within a paragraph of the General Conditions, the following language may be used:

SC 6.21.A Amend the second sentence of Paragraph 6.21.A [to read as follows] [or] [by striking out the following words]:

E. *Format for Additional Language*

When adding language to an existing paragraph of the General Conditions, the idea may be expressed as follows:

SC 9.03 Add the following language at the end of the second sentence of Paragraph 9.15:

F. *Format for Additional Paragraph*

If it is desired to add a new paragraph to the General Conditions, the thought may be expressed as follows:

SC 8.06 Add the following new paragraph immediately after Paragraph 8.06.B:

III. ALTERNATIVE FORMAT FOR SUPPLEMENTARY CONDITIONS

Electronic files are commonly used for transmittal and storage of the text of standard documents. In fact, EJCDC no longer publishes printed documents. Because it is easy to modify documents electronically, it is increasingly common for practitioners to integrate the text of desired Supplementary Conditions into the text of the General Conditions. Most word processing programs have line-out and underlining features that accurately show deletions, changes, and additions. Users of EJCDC's General Conditions are contractually obligated, through the terms of the purchase of the document, to clearly delineate all changes made to the standard text of the General Conditions to other parties in interest (for example, if Owner makes changes, Owner should show these changes to prospective bidders). It would be misleading to users to imply or represent that the General Conditions are EJCDC's General Conditions if changes are not properly and clearly identified during the contract formation process.

IV. SUGGESTED SUPPLEMENTARY CONDITIONS

A. *Caption and Introductory Statements*

The following is a suggestion for use at the beginning of the Supplementary Conditions for a specific project:

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

- A. If the Contract will include a Geotechnical Baseline Report (see Article 5 below), include the following definitions:

SC-1.01. Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

Geotechnical Baseline Report (GBR) — The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR's own terms. The GBR is a Contract Document.

Geotechnical Data Report (GDR) — The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.01 Delivery of Bonds and Evidence of Insurance

- A. Paragraph 2.01.B of the General Conditions requires that Contractor furnish certificates of insurance. Paragraph 6.02.C states that upon request by Owner or other named or additional insureds, Contractor must provide evidence of insurance such as copies of required policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Parallel provisions apply to Owner and the insurance that Owner is required to provide. Rather than relying on this two-step process (delivery of certificates of insurance at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:

SC-2.01 Delete Paragraphs 2.01 B. and C. in their entirety and insert the following in their place:

- B. Evidence of Contractor's Insurance: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in Article 6. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.**
- C. Evidence of Owner's Insurance: After receipt from Contractor of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor copies of the policies of insurance to be provided by Owner under Article 6 (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.**

SC-2.02 Copies of Documents

- A. If the number of printed or hard copies of the Drawings and Project Manual to be provided is different than four copies the following may be used:

SC-2.02.A. Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor [] copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

- B. On some projects it may be useful to produce conformed Contract Documents, in which the content of Addenda and negotiated changes are merged into the appropriate Specifications, Drawings, General Conditions, or other Contract Documents. This may be especially true on private construction projects where the terms and scope are negotiated and modified significantly after the initial release of proposed Contract Documents. Conformed documents may be considerably more convenient to use during the performance of the Work and the administration of the Contract.

EJCDC advises that if conformed documents are to be prepared and made available to Contractor, sufficient time and budget must be allocated to ensure the quality and full coordination of the conformed documents, and Owner and Engineer must recognize that Contractor, Subcontractors,

and Suppliers will likely rely on the conformed version of the Contract Documents rather than the source components. If conformed documents are prepared without the level of commitment necessary to allow them to be accorded the full status of “Contract Documents,” and are merely for reference or convenience, they should be accompanied by clear disclaimers of their content and a warning to consult the actual source Contract Documents.

A Supplementary Condition regarding conformed documents is necessary only if the Owner intends to provide the Contractor with conformed documents that will serve as binding Contract Documents. The following may be used for that purpose:

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor [] copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

C. Note: If Owner is not furnishing PDF or other electronic files of the Contract Documents, then draft (1) a Supplementary Condition that deletes the reference in 2.02.A of the General Conditions to providing the PDF files, and (2) a Supplementary Condition that deletes Paragraph 3.01.C in its entirety.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Subsurface and Physical Conditions

A. **This is a mandatory Supplementary Condition.** Paragraph 5.03, Subsurface and Physical Conditions, of the General Conditions requires the identification of all known documents regarding subsurface and physical conditions at or adjacent to the Site (this requirement is broader than merely requiring that Contractor be given access to subsurface reports prepared for the current Project). It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use the first version of SC-5.03, presented immediately below, for the purpose of identifying the known Site condition documents. If no such documents are known, then use the second version of SC-5.03, below. Also note that if the known documents include either a geotechnical report or environmental report prepared for the Project, or both, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy Contractor may rely, that is contained in such reports, then the default definition of Technical Data in Paragraph 1.01 of the General Conditions will apply.

Note that if Owner elects to furnish a Geotechnical Baseline Report (GBR), use the alternate SC/GBR-5.03 and SC/GBR 5.04 located in the next section of this document, rather than one of the SC-5.03 versions immediately following. If a GBR is used, it remains important to disclose known reports and tests regarding subsurface conditions; a place for doing so is provided in SC/GBR-5.03. If some Site conditions are outside the scope of the Geotechnical Baseline Report it will continue to be necessary to identify reliable Technical Data contained in such reports and drawings; however, if the Geotechnical Baseline Report or a related Geotechnical Data Report already establish the data that is worthy of reliance, it will not be necessary to make a redundant identification in SC/GBR 5.03.

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.B:

C. The following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner:

- 1. Report dated** *[May 21, 2013, prepared by Aye and Bea, Consulting Engineers, Philadelphia, Pa., entitled: "Results of Investigation of Subsoil Conditions and Professional Recommendations for Foundations of Iron Foundry at South and Front Streets, Pembrig, NJ", consisting of 42 pages.]* **The Technical Data contained in such report upon whose accuracy Contractor may rely are** *[here indicate any such Technical Data, or state "none."]* **[or] [those indicated in the definition of Technical Data in the General Conditions.]**
- 2. Report dated** *[May 2, 2000, prepared by Ecks, Wye and Tsze, Inc., Baltimore, Md., entitled: "Tests of Water Quality in Mixer River at Pembrig, NJ", consisting of 26 pages.]* **The Technical Data contained in such report upon whose accuracy Contractor may rely are** *[here indicate any such Technical Data, or state "none."]* **[or] [as indicated in the definition of Technical Data in the General Conditions.]**

D. The following drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) are known to Owner:

- 1. Drawings dated** *[March 2, 2000, of Route 24A Overpass Abutment, prepared by Dea & Associates, Inc., Wilmington, Del., entitled: "Record Drawings: Route No. 24A Overpass Abutment", consisting of 12 sheets numbered 001 to 012, inclusive.]*

[Use one of the following two subparagraphs:]

- a. All of the information in such drawings constitutes Technical Data on whose accuracy Contractor may rely, except for** **appearing on Drawing No.** **and**
 appearing on Drawing No. .

[or]

- a. None of the contents of such drawings is Technical Data on whose accuracy Contractor may rely.**

E. Contractor may examine copies of reports and drawings identified in SC 5.03.C and SC 5.03.D that were not included with the Bidding Documents at *[insert location]* **during regular business hours, or may request copies from Engineer.**

If there are no known Site-related reports or drawings, use the following version of SC-5.03:

SC 5.03 Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

- A. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.**
- B. Geotechnical Baseline Reports:** Some project owners use a Geotechnical Baseline Report (GBR) for projects (or portions of a project) in which the subsurface conditions will play a significant role. Providing a GBR may result in bids with lower contingencies for subsurface conditions, and simplify

the application of the differing site conditions provisions in Article 5 of the General Conditions. Commentary on Geotechnical Baseline Reports is presented in EJCDC® C-001. See also Geotechnical Baseline Reports for Construction—Suggested Guidelines, by Randall J. Essex, P.E., ASCE 2007. In many cases it may be advantageous for Owner, Engineer, or the geotechnical engineer to engage a consultant with GBR experience to assist in preparation of the GBR and related documents.

On projects in which a Geotechnical Baseline Report is used, it is typical to also assemble and provide a Geotechnical Data Report (GDR), as a separate, single source of factual geotechnical information regarding the Site. The content of the GDR is in essence what the EJCDC documents define as “Technical Data”—reliable factual information, such as boring logs and laboratory test results. (See the definition of Technical Data in Article 1 of the General Conditions, and the definition of a GDR in Article 1 of these Supplementary Conditions). Some Owners may elect to issue a GBR without compiling a GDR, but regardless of the format it is essential to identify and make all geotechnical data available. Note that a typical general purpose geotechnical report, usually prepared primarily to assist in the design of the project, often contains not only factual data but also opinions, interpretations, and even speculation regarding the Site’s subsurface conditions. **Such a geotechnical report is not suitable to be adopted or identified as a GDR.**

Although it is preferable that a GBR be comprehensive with respect to subsurface conditions, in some cases a GBR will establish baselines for a portion of a project, but will not address all subsurface issues. For example, the GBR may establish baseline subsurface conditions along the route of a pipeline, but be silent with respect to conditions underlying an associated pump building. Also, in some cases a project will involve both subsurface construction as well as building modifications or other tasks unrelated to geotechnical investigations, analysis, or interpretations. The SC/GBR provisions that follow retain certain differing site condition provisions of the General Conditions, in part because these may be needed for situations that are outside the scope of the GBR. As noted previously, these SC/GBR provisions contain locations for (1) identifying known reports and drawings regarding the subsurface conditions (a mandatory obligation), and (2) identifying Technical Data upon whose accuracy Contractor may rely (necessary in some but not all GBR projects, depending on the scope of the GBR and GDR documents).

If a GBR is used, then include the following GBR Supplementary Conditions, and do not use either of the Paragraphs SC-5.03 above:

SC/GBR-5.03 and 5.04. Delete Paragraphs 5.03 and 5.04 of the General Conditions in their entireties and replace with the following provisions:

SC/GBR-5.03 Subsurface and Physical Conditions

A. Reports and Drawings: The Supplementary Conditions hereby identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report), and Technical Data contained in such reports. Such reports are as follows:**
 - a. Report dated [May 21, 2013, prepared by Aye and Bea, Consulting Engineers, Philadelphia, Pa., entitled: “Results of Investigation of Subsoil Conditions and Professional Recommendations for Foundations of Iron Foundry at South and Front Streets, Pembrig, NJ”, consisting of 42 pages.] The Technical Data contained in such report upon whose accuracy Contractor may rely are [here indicate any such Technical Data**

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

C. Geotechnical Baseline Report:

1. This Contract contains a Geotechnical Baseline Report (“GBR”), identified as follows: *[Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]*. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: *[Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]*
2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR’s terms shall prevail.
3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as “Baseline Conditions”). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.
4. The Baseline Conditions shall be used to assist in the administration of the Contract’s differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions shall be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, shall be used for the differing site condition determination.
5. The Baseline Conditions shall not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions shall be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR shall be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.
6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface

conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.
8. The GBR shall not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

SC/GBR-5.04 Differing Subsurface or Physical Conditions

A. Notice: If Contractor believes that any subsurface condition that is uncovered or revealed at the Site:

1. differs materially from conditions shown or indicated in the GBR; or
2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or
3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or
4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or
6. to the extent the GBR and GDR are inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. Engineer's Review: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC/GBR 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or

physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. Owner's Statement to Contractor Regarding Site Condition:

After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption or continuation of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph SC/GBR 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph SC/GBR 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

SC-5.06 Hazardous Environmental Conditions

- A. **This is a mandatory Supplementary Condition.** Paragraph 5.06 of the General Conditions contemplates that Owner identify all known documents regarding Hazardous Environmental Conditions (HEC) that have been identified at or adjacent to the Site. It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use the first version of SC-5.06, presented immediately below, to identify the known HEC documents. If no HEC documents are known, then use the second version of SC-5.06, below. Also note that if the known documents include either a geotechnical report or environmental report prepared for the Project, or both, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy Contractor may rely, that is contained in such reports, then the default definition of Technical Data in Paragraph 1.01 of the General Conditions will apply.

SC-5.06 Add the following subparagraphs 5.06.A.1 and 5.06.A.2:

1. **The following reports regarding Hazardous Environmental Conditions at the Site are known to Owner:**
 - a. **Report dated December 10, 2012, prepared by Eph Environmental Consultants, Princeton, N.J., entitled: "Results of Investigation of Conditions at Iron Foundry at South and Front Streets, Pembrig, NJ", consisting of 27 pages. The Technical Data contained in such report upon whose accuracy Contractor may rely are [here indicate any such Technical Data or state "none."]**
2. **The following drawings regarding Hazardous Environmental Conditions at the Site are known to Owner:**
 - a. **Drawings dated November 27, 2002, prepared by Eph Environmental Consultants, Princeton, N.J., entitled: "Iron Foundry Site Conditions", consisting of 5 sheets numbered [] to [], inclusive.**

[Use one of the following two subparagraphs:]

- 1) **All of the information in such drawings constitutes Technical Data on whose accuracy Contractor may rely, except for [] appearing on Drawing No. [] and [] appearing on Drawing No. [].**

[or]

- 1) **None of the contents of such drawings is Technical Data on whose accuracy Contractor may rely.**

B. Use the following SC-5.06 if there are no known HEC reports or drawings:

SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

- A. **No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.**
- B. **Not Used.**

ARTICLE 6 – BONDS AND INSURANCE

SC-6.02 Insurance—General Provisions

A. Paragraph 6.02.B of the General Conditions requires that all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better, unless a different standard is indicated in the Supplementary Conditions. The A.M. Best ratings are based on the financial strength and size of the insurance company, with A-VII representing a commonly used standard. SC-6.02 is the location for noting any different standard, whether narrower or broader.

Note that in some states not all worker’s compensation insurers obtain A.M. Best ratings. The Owner may wish to include the following optional exception (modified to meet applicable provisions in the state) to the requirement in 6.02.B:

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

- 1. **Contractor may obtain worker’s compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker’s compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker’s compensation insurance for similar projects by the state within the last 12 months.**

SC-6.03 Contractor’s Liability Insurance

A. **This is a mandatory Supplementary Condition**, because it is the location for specifying the limits of the coverages for the insurance required in Paragraph 6.03 of the General Conditions. The information set forth in this Supplementary Condition (and in all other contractual provisions regarding bonds and insurance) should be provided by Owner, either directly or through written instructions given to Engineer (see EJCDC® C-051, Engineer’s Letter to Owner Requesting Instructions Concerning Bonds and Insurance, and EJCDC® C-052, Owner’s Instructions to Engineer Concerning Bonds and Insurance).

SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

- 1. **Workers’ Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:**

State: Statutory

Federal, if applicable (e.g., Longshoreman’s): Statutory

Jones Act coverage, if applicable:

Bodily injury by accident, each accident \$ _____
 Bodily injury by disease, aggregate \$ _____

Employer's Liability:

Bodily injury, each accident \$ _____
 Bodily injury by disease, each employee \$ _____
 Bodily injury/disease aggregate \$ _____

For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of: \$ _____

Foreign voluntary worker compensation Statutory

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate \$ _____
 Products - Completed Operations Aggregate \$ _____
 Personal and Advertising Injury \$ _____
 Each Occurrence (Bodily Injury and Property Damage) \$ _____

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

Bodily Injury:

Each person \$ _____
 Each accident \$ _____

Property Damage:

Each accident \$ _____

[or]

Combined Single Limit of \$ _____

4. Excess or Umbrella Liability:

Per Occurrence \$ _____
 General Aggregate \$ _____

EJCDC® C-800, Guide to the Preparation of Supplementary Conditions.

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SC-6.05 Property Insurance

- A. **Builder’s Risk Deductible:** Paragraph 6.05.A of the General Conditions requires builder’s risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. In many cases, the drafter of the Supplementary Conditions will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible. Note that it is common for builder’s risk policies to feature several different deductibles, typically including a primary deductible and specific deductibles applicable to specific types of loss. The following Supplementary Condition provides a means of identifying a primary deductible; other specific deductibles may also be added.

If a primary deductible is to be stipulated, use the following to establish the maximum amount of the deductible:

SC-6.05. Add the following to the list of requirements in Paragraph 6.05.A, as a numbered item:

- 13. be subject to a deductible amount of no more than [\$] for direct physical loss in any one occurrence.**

- B. **Builder’s Risk—Supplemental Insureds:** Paragraph 6.05.A.1 of the General Conditions refers to other individuals or entities (in addition to the Owner, Contractor, and all Subcontractors) that are to be identified in the Supplementary Conditions as being entitled to protection as insureds under the builder’s risk insurance on the Work. In such cases use the following:

SC-6.05.A.1 Add the following new subparagraph after subparagraph 6.05.A.1:

- a. In addition to Owner, Contractor, and all Subcontractors, include as insureds the following:**

[Here list by name (not category, role, or classification) other persons or entities to be included on the builder’s risk policy as insureds.]

- C. **Builder’s Risk—Supplemental Requirements:** Paragraph 6.05.A of the General Conditions lists several items that are to be included in the builder’s risk insurance. Consider adding one or more of the following items to the list as appropriate to the specific project:

SC-6.05.A. Add the following to the list of items in Paragraph 6.05.A, as numbered items:

- 14. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorneys fees and engineering or other consultants’ fees, if not otherwise covered;**

- 16. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:**

a. [here list specific items of equipment and purchase value]

b. [here list items of material and purchase value]

- 17. include by express endorsement coverage of damage to Contractor’s equipment.**

- D. **Installation Floater:** An installation floater is insurance carried by the Contractor, covering the materials and equipment to be incorporated in the Work. It typically does not insure against losses

that occur after installation. In most cases, builder's risk insurance offers broader coverage and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder's risk policy. See EJCDC® C-001, Commentary on the 2013 EJCDC Construction Documents. (In other instances, Contractor may choose to purchase an installation floater to supplement property insurance provided by Owner.) If, after consultation with its risk managers, Owner elects to require purchase of an installation floater rather than a builder's risk policy, the following requirements may be included as a Supplementary Condition:

SC-6.05.A. Delete Paragraph 6.05.A of the General Conditions and substitute the following in its place:

Contractor shall provide and maintain installation floater insurance for property under the care, custody, or control of Contractor. The installation floater insurance shall be a broad form or "all risk" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work. Coverage under the Contractor's installation floater will include:

- 1. any loss to property while in transit,**
- 2. any loss at the Site, and**
- 3. any loss while in storage, both on-site and off-site.**

Coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable. The Contractor will be solely responsible for any deductible carried under this coverage and claims on materials, supplies, machinery, fixture, and equipment that will be incorporated into the Work while in transit or in storage. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

- E. Builder's Risk—Owner Purchase: In the event that the Owner, rather than the Contractor, will purchase the Builder's Risk insurance, use the following SC-6.05.A:

SC 6.05.A. Delete the first sentence of Paragraph 6.05.A and insert the following sentence in its place:

Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.02 Labor; Working Hours

Paragraph 7.02.B of the General Conditions restricts Contractor to working during "regular hours" Monday through Friday, and no work is permitted on "legal holidays."

- A. To provide details regarding the meaning of the terms "regular hours" and "legal holidays," consider specifically defining them by adding the following:

SC-7.02.B. Add the following new subparagraphs immediately after Paragraph 7.02.B:

- 1. Regular working hours will be [here insert schedule of regular working hours]**
- 2. Owner's legal holidays are [here insert list of legal holidays]**

B. To modify the days of the week that Contractor may work, use the following:

SC-7.02.B. Amend the first and second sentences of Paragraph 7.02.B to state “...all Work at the Site shall be performed during regular working hours, [] through []. Contractor will not perform Work on a [], [], or any legal holiday.”

C. If the Owner has no objections to the Contractor working multiple shifts, weekends, and legal holidays, use the following:

SC-7.02.B. Delete Paragraph 7.02 B. in its entirety, and insert the following:

B. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.

D. If Contractor is permitted to Work outside regular hours and on weekends and holidays, whether by a contractual provision or by Owner’s consent during the course of the Project, then it is good practice to address the issue of whether Owner may charge Contractor for engineering expenses associated with the non-regular schedule. Some Owners may prefer to absorb these costs to incentivize (or at least facilitate) an aggressive schedule and timely completion; and in many cases the net additional expense may be modest. Other Owners may prefer to establish and collect a charge for the engineering services. Add the following as SC-7.02.C, making a policy choice regarding responsibility in the beginning of the sentence:

SC-7.02.C. Add the following new paragraph immediately after Paragraph 7.02.B:

[Contractor] [Owner] *[choose one and delete the other]* shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer’s services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

E. If responsibility for costs in SC-7.02.C will be allocated to Contractor, Owner may wish to provide some specificity regarding the potential costs, through the addition of the following:

SC-7.02.C. Add the following new subparagraph immediately after Paragraph 7.02.C:

1. For purposes of administering the foregoing requirement, additional overtime costs are defined as *[here insert parameters for compensated overtime hours]*

SC-7.09 Taxes

A. If Owner qualifies for a state or local sales or use tax exemption in the purchase of certain materials and equipment, add the following Supplementary Condition, with any revisions necessary to meet the specific applicable exemption rules. (Note: If instructions to bidders or proposers are used, confirm that the provisions here are consistent with the corresponding provisions in such instructions. See Suggested Instructions to Bidders for Construction Contracts, EJCDC® C-200, Article 23.)

SC 7.09 Add a new paragraph immediately after Paragraph 7.09.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of [insert name of state where Project is located] and of cities and counties thereof on all materials to be incorporated into the Work.**
- 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.**
 - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.**

SC-7.12 Safety and Protection

- A. Some Owners have written safety programs with which construction contractors must comply. If such is the case, Paragraph 7.12.C of the General Conditions mandates that the safety program be identified in the Supplementary Conditions (and Paragraph 9.12 requires Owner to provide a copy of such programs to Contractor). The identification of the safety programs may be accomplished as follows:

SC-7.12 Insert the following after the second sentence of Paragraph 7.12.C:

The following Owner safety programs are applicable to the Work: *[here expressly identify by title and/or date, any such Owner safety programs].*

ARTICLE 8 – OTHER WORK AT THE SITE

SC-8.02 Coordination

- A. Paragraph 8.02 of the General Conditions requires that if in addition to retaining Contractor, Owner will arrange to have others perform work at the Site, Owner must provide to Contractor specified information regarding coordination of construction activities. (Note that Owner should provide specific information about the other work —nature of the work, scope, schedule, exact location— elsewhere in the Contract Documents or in other documentation.) Use the following in that case:

SC-8.02 Delete Paragraph 8.02.A in its entirety and replace with the following:

- A. Owner intends to contract with others for the performance of other work at or adjacent to the Site.**
- 1. [Here identify individual or entirety] shall have authority and responsibility for coordination of the various contractors and work forces at the Site;**
 - 2. The following specific matters are to be covered by such authority and responsibility:** *[here itemize such matters];*
 - 3. The extent of such authority and responsibilities is:** *[here provide the extent]*

ARTICLE 9 – OWNER'S RESPONSIBILITIES

SC-9.13 Owner's Site Representative

- A. Paragraph 10.03 of the General Conditions indicates that the Owner may designate a representative or agent who is not Engineer's consultant, agent, or employee, to represent Owner

at the Site (“Owner’s Site Representative”). In such case the Owner typically would not have the Engineer furnish a Resident Project Representative, hence the second version of SC-10.03.B below would be used to indicate there is no Engineer’s Resident Project Representative.

The following should be used for the identification of the Owner’s Site Representative. Note that the following must be supplemented by customized text that explains the responsibilities of the Owner’s Site Representative, so far as such are relevant to Contractor. The content of Paragraphs SC-10.03.B and C below may be a helpful starting point in drafting such supplemental text. In addition, if Owner’s retention of an Owner’s Site Representative will affect other aspects of Engineer’s status during construction, other portions of Article 10 and many other parts of the General Conditions will need to be revised. In such cases it is typical for (and Laws and Regulations may require) the design engineer (as engineer of record) to at least retain a role with respect to design-intent reviews of submittals and similar aspects of the Work.

SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

SC-9.13 Owner will furnish an “Owner’s Site Representative” to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner’s Site Representative is not Engineer’s consultant, agent, or employee. Owner’s Site Representative will be [Here identify individual or entirety]. The authority and responsibilities of Owner’s Site Representative follow: [Here describe the duties and activities of the Owner’s Site Representative]

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

SC-10.03 Project Representative

A. **This is a mandatory Supplementary Condition.** As indicated in Paragraph 10.03 of the General Conditions, in those cases in which the Engineer will provide a Resident Project Representative (RPR) during construction, the authority and responsibilities of the RPR must be specified in the Supplementary Conditions. SC-10.03.B and C, immediately below, provide a mechanism for doing so. In the alternative, in some cases Engineer will not provide RPR services, either because there will not be an RPR, or because a party other than Engineer will provide the site services. When such is the case, the second SC-10.03.B below should be used.

As indicated in Paragraph 10.03 of the General Conditions, the Owner may designate a representative or agent who is not Engineer’s consultant, agent, or employee, to represent Owner at the Site. In such case, in addition to using the second version of SC-10.03.B, below, also use SC-9.13 above.

The following suggested language, which parallels the wording of Exhibit D to EJCDC® E-500, the Agreement Between Owner and Engineer for Professional Services, is for use when Engineer will provide RPR services. It should be edited to indicate the RPR authority and responsibilities that apply to this Contract.

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.A:

B. The Resident Project Representative (RPR) will be Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.

1. General: RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only

be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
3. **Conferences and Meetings:** Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. **Liaison:**
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. **Interpretation of Contract Documents:** Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. **Shop Drawings and Samples:**
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. **Modifications:** Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. **Review of Work and Rejection of Defective Work:**
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents,

or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. **Certificates, Operation and Maintenance Manuals:** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. **Completion:**
 - a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
 - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

[or]

B. On this Project, by agreement with the Owner, Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work. *[See explanatory text*

at beginning of SC-9.13, and at beginning of SC-10.03, for discussion of this second alternative SC-10.03.B]

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-13.01 *Cost of the Work*

- A. Equipment rental charges, particularly with respect to Contractor-owned equipment, can sometimes lead to disagreements. To reduce the possibility of such disagreements, the following Supplementary Condition may be used. Note that it requires a published reference or method for determining the costs.

SC 13.01.B.5.c Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

c. Construction Equipment and Machinery:

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the *[cite the rate book appropriate for the Project]*. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-13.03 *Unit Price Work*

- A. The following Supplementary Condition is typically called a “variation in estimated quantities (VEQ) clause” and facilitates administrative resolution of situations where actual quantities of unit price items differ materially from estimated quantities. Typically, the clause applies where the extended price (unit price times estimated quantity) of an item of the Unit Price Work is more than 5 percent of the Contract Price (based on estimated quantities), and the actual quantity of the units of work performed or furnished varies by more than a specified percent (typically 15 to 25 percent).

SC 13.03.E Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:**
1. if the extended price of a particular item of Unit Price Work amounts to percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that

particular item of Unit Price Work actually furnished or performed by Contractor differs by more than █ percent from the estimated quantity of such item indicated in the Agreement; and

2. if there is no corresponding adjustment with respect to any other item of Work; and
3. if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, Owner may make a Claim, seeking an adjustment in the Contract Price.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

SC-15.03 *Substantial Completion*

- A. Paragraph 15.03.A of the General Conditions requires Contractor to give notice that the Work is substantially complete; Paragraph 15.03.B requires an inspection of the Work to determine whether Engineer agrees that the Work is substantially complete. If the Work is not substantially complete, and must be inspected again at a later point, then the following Supplementary Condition, if included in the Contract, would allow Owner to recover the cost of the re-inspection.

SC 15.03.B Add the following new subparagraph to Paragraph 15.03.B:

1. **If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.**

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

- B. Paragraph 17.01.B of the General Conditions provides that for any dispute subject to final resolution under Article 17, Owner or Contractor may invoke the dispute resolution procedure called for in the Supplementary Conditions. Paragraph SC-17.02 is the location to identify any such primary dispute resolution procedure. If no procedure is identified here in the Supplementary Conditions, and the parties do not agree to a specific procedure, then the default resolution procedure will be litigation—the pursuit of rights in a court of competent jurisdiction. Note that before reaching the point of final resolution of disputes, in most cases the Owner and Contractor will already have engaged in the Claim process described in Article 12 of the General Conditions. That process allows for mediation of the dispute.

As an alternative to litigation, there are many other possible dispute resolution procedures, or combinations of procedures. One of the most common is arbitration; wording for an arbitration clause follows. A discussion of the pros and cons of the arbitration process (and there are many advocates on both sides) is beyond the scope of this Guide. Owner should consult with its legal counsel when considering the inclusion of an arbitration clause, or of any other dispute resolution procedure or combination of procedures.

The arbitration option is as follows:

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

SC-17.02 Arbitration

- A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of *[insert name of selected arbitration agency]*, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.**
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-17.02.D below.**
- C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and**
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.****
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.**
- E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.**
- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.**

SC-17.03 Attorneys' Fees

- A. In most jurisdictions in the United States, as a general matter each party to a dispute is responsible for its own attorneys' fees, unless an express agreement provides to the contrary. Some legal authorities believe that this general rule encourages claims and disputes, because claimants have**

little concern that they will be forced to pay for the opposing party's fees if the claim fails. Other authorities take the opposite view—that the enticing prospect of not only prevailing but also of having one's own fees paid by the opponent would encourage overly aggressive pursuit of claims (or overzealous defense against valid claims).

If an exception to the general American rule is preferred for disputes subject to final resolution under Article 17, then add the following express agreement:

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. *[Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new paragraph immediately after Paragraph 17.01" and revise the numbering accordingly.]*

SC-17.03 Attorneys' Fees: For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.