

EXHIBIT D- SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS.

The Contract Documents consist of the Advertisement for Bids, Instructions to Bidders, Summary of Information to Bidders, Method of Payment, Proposal (as accepted), Contract, General Conditions, the Technical Specifications and the Drawings, including all modifications and addenda thereof incorporated in the documents before their execution. These form the Contract.

The Owner as used herein shall refer to and designate a public body or authority, corporation, association, partnership or individual for whom the work is to be performed, or his or their authorized representative or agent.

The Contractor is the individual, partnership, corporation or other entity undertaking to do the work herein specified, or his or their heirs, legal representatives, successors or assigns. When more than one prime contract is awarded for a single project the general contractor shall be so designated by the Owner.

The Engineer shall be Clearwater Gas System. The word Engineer shall include the officers, agents, inspectors and employees of Clearwater Gas System.

A Subcontractor shall be an individual, partnership, corporation or other entity having a direct contract with the Contractor to furnish material, work to a special design according to the plans and specifications of this work or supplying specialized labor and materials for this work. This does not include one who merely furnishes material or labor not particular to this project.

Written Notice shall be deemed to have been fully served 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 registered mail to the last business address known to him who gives notice.

The term "Work" of the Contractor or the Subcontractor includes labor or materials, or both, equipment, transportation, or other facilities necessary to complete the contract. All time limits stated in the Contract Documents are the essence of the Contract. Whenever the word "approved" is used herein, it shall be held, unless otherwise specified, to mean as approved by the Owner. Similar use will be made of the words "directed," "required," "permitted," and words of like import.

2. EXTENT OF CONTRACT.

The Advertisement for Bids, Instructions to Bidders, Summary of Information to Bidders, Method of Payment, Proposal (as accepted), Contract, General Conditions, the Technical Specifications, and the Drawings are, and shall be taken to be, parts of this Contract. All work and materials mentioned in the specifications and not shown on the drawings and all work and materials shown on the drawings and not mentioned in the specifications, and all work and materials necessary for the completion of the work according to the true intent and meaning of the contract drawings and specifications, and all work and materials required to complete the entire facility as described in the Advertisement shall be furnished, performed and done, as if the same were both mentioned in the specifications and shown on the drawings.

The drawings which accompany the specifications are herein designated contract drawings and are for the purpose of illustrating the general character and extent of the work and are subject to such modifications and elaboration's by the Owner and Engineer as may be found necessary or advisable, either before or during the prosecution of the work, and the Contractor shall conform to and abide by whatever supplementary drawings and explanations that may be furnished by the Engineer for the purpose of illustrating the work. The Engineer shall decide as to the true meaning or intention of any portion of the specifications and drawings where the same may be found unclear or in conflict.

Should anything be omitted from the contract drawings or specifications which is necessary for a clear understanding of the work, or should any error appear either in any of the various instruments furnished or in the work done by other Contractors affecting the work included under this contract, the Contractor shall promptly notify the Engineer of such omissions or errors, and in the event of the

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Contractor's failure to do so, he shall make good any damage to or defect in his work caused thereby. He will not be allowed to take advantage of any error or omission on the contract drawings, as full instructions will be furnished by the Engineer, should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

3. OBLIGATIONS OF CONTRACTOR.

The Contractor shall, at his own cost and expense **unless otherwise specified**, furnish all the necessary materials, labor, supervision, manager, 24-hour/7 days a week direct reliable communication devices, tools, equipment and appliances, and shall construct, finish, test and purge, connect in a safe, substantial and workmanlike manner the work of this contract within the time and in the manner specified and in accordance with the contract drawings.

The Contractor shall complete the entire work to the satisfaction and approval of the Owner and shall accept in consideration of, and as full compensation for the work, the sums set opposite the respective classes of work and materials named in the Contract and proposals herein contained, the said sums being the amount at which the Contract therefore was awarded to the Contractor.

Acceptance or approval of the work or materials by the Owner does not relieve the Contractor from liability for poor or defective workmanship and/or materials and any such acceptance or approval is understood to relate to work or materials which can be observed and does in no way pertain to latent defects or defects ascertainable through testing.

4. SUBCONTRACTS.

The Contractor shall not assign or sublet the whole or any part of the work without the written consent of the Owner and without the written approval by the Owner of the specific party to whom it is proposed to assign or sublet the same. No such consent and approval, and no approval of the form of such assignment or subletting, shall release or relieve the Contractor from any of the obligations and liabilities assumed by him under this Contract, and, as between the parties hereto, the Contractor shall remain responsible and liable as if no such assignment or subletting had been made. Contractor's markup fee shall not exceed 5% above subcontractor's estimate for the work.

Nothing contained in the Contract documents shall create any contractual relationship between any subcontractor and the Owner. The Contractor shall comply with the ASME B31Q Code, which meets the requirements of Federal CFR 49 Part 192 Subpart N, particularly the "Span of Control" ratio which requires the supervision of non-qualified personnel by OQ certified individuals depending on the performance of the covered task.

5. SEPARATE CONTRACTS.

The owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Owner any discrepancy between the executed work and the drawings.

Wherever work being done by the Owner's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Owner, to secure the completion of the various portions of the work in general harmony.

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6. BONDS.

The bidder to whom the Contract is awarded must, within ten (10) calendar days following notice of award, present himself to the place designated in the official notice of acceptance, for signing of the Contract and the plans, and to substitute for the bid security, a surety performance - payment bond in the amount of thirty percent (30%) of the Contract price, conditioned that the Contractor will faithfully perform all work of this contract and promptly pay for all materials furnished and labor supplied or performed in the prosecution of all work. All bonds and insurance shall be issued by companies authorized to transact business in the State of Florida and acceptable to the Owner.

7. ACCIDENTS AND CLAIMS.

The Contractor shall be held responsible for all accidents and shall indemnify and protect the Owner and Engineer from all suits, claims and actions brought against it, and all cost for liability to which the Owner or Engineer may be put for any injury or alleged injury to the person or property of another resulting from negligence or carelessness in the performance of the work, or in protection of the project site, or from any improper or inferior workmanship, or from inferior materials used in the work.

8. MUTUAL RESPONSIBILITY OF CONTRACTORS.

Should a Contractor in the performance of his Contract cause damage to any person, any property, or work of another Contractor working on this project, he shall, upon due notice to do so from the Owner or other party to the damage, arrange for an amicable settlement thereon. It is agreed by all parties herein that such disputes shall not delay completion of the work, nor be cause for claim against the Owner or Engineer. Work shall be continued by the party claiming damages at his expense, subject to such damages as may be obtained by due course of law.

9. CONTRACTOR'S LIABILITY.

The status of the Contractor in the work to be performed by him under this Contract is that of an independent Contractor and that as such he shall properly safeguard against any and all injury or damage to any person, to public and private property, materials and things; and that, as such, he alone shall be responsible for any and all damage, loss or injury to persons or property that may rise, or be incurred, in or during the conduct or progress of said work without regard to whether or not the Contractor, his subcontractors, agents, or employees have been negligent; and that Contractor shall keep the Owner and Engineer free from, and shall discharge any and all responsibility and therefore of any sort or kind. The Contractor shall assume all responsibility for risks or casualties of every description, for any or all damage, loss or injury to persons or property arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty, including losses of associated business revenue resulting from utility damage, the Contractor shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any federal, state, county, or local laws, regulations or ordinances; that Contractor shall indemnify and save harmless the Owner and Engineer all their officers, agents, and employees, from all suits or actions at law of any kind whatsoever in connection with this work and shall, if required by the Owner, produce evidence of settlement of any such action before final payment shall be made by the Owner. Contractor acknowledges receipt of one dollar as full and specific consideration for this indemnity agreement.

10. FAMILIARITY WITH CONTRACT REQUIREMENT.

It is the responsibility of, and it is hereby agreed that, the Contractor has, prior to signing of the Contract, satisfied himself as the nature and location of the work, the conformation of the ground, the character, quality, and the quantity of the materials which will be required, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and of all other matters which can in any way affect the scope of the work under this Contract.

Information concerning the general condition of the project site existing at the time of bidding is presented in the plans and specifications solely for information and convenience in describing the work to be accomplished and the use by the Contractor of such information cannot in any way relieve the Contractor of his responsibilities as outlined herein for determining the actual conditions existing

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at the site and for basing his bid price upon such conditions.

No verbal agreement or conversation with any officer, agent, employee of the Owner, or the Engineer, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained. Failure to comply with any or all of the requirements will not relieve Contractor from the responsibility of properly estimating the difficulty or costs of successful completion of the work nor from the responsibility for the faithful performance of the provisions of this Contract.

11. PERMITS AND LICENSES.

Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor unless otherwise specified. Permits, licenses and easements for CGS gas mains and services classified as CGS permanent structures or permanent changes in existing facilities will be secured and paid for by the Owner, unless otherwise specified. Contractor will also be responsible for obtaining gas permits related to house piping connections to gas meter if required, and maintenance of appropriate trade licenses to perform the specific scope of work described in this contract, including consumer's underground house piping and gas meter relocation piping and connections. They also will be noted as contractor of record on the applicable permits and be licensed as a contractor in the disciplines of plumbing or Natural / LP gas contracting in the State of Florida and registered in Pinellas and or Pasco counties to perform all underground house piping related work and meter connections.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising there from.

12. LAWS AND REGULATIONS.

The Contractor at all times shall observe and comply with all Federal, State, Local, and/or Municipal laws, ordinances, rules, and regulations in any manner and those which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work and shall indemnify and save harmless the Owner against any claim or liability arising from, or based on, the violation of any such law, ordinance, rule, regulation, order, or decree.

The bidder is assumed to have made himself familiar with all Federal, State, Local, and Municipal laws, ordinances, rules, and regulations which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way affect the work and no plea of misunderstanding will be considered an excuse for the ignorance thereof. The Contractor shall be licensed and competent in the required discipline of installing gas mains, services, underground customer piping systems and related gas meter connections.

13. PLANS, SPECIFICATIONS AND SHOP DRAWINGS.

The specifications are intended to supplement and clarify the plans. Work is sometimes called for in the specifications that is not shown completely on the plans; and the plans sometimes indicate work that is not mentioned in the specifications. Both plans and specifications must be complied with completely in order to fulfill the Contract requirements; and whether or not the work is specifically defined in any bid item, any work called for by either is as binding as if it were called for by both. The construction drawings, as prepared prior to receiving bids, are intended to describe the general scope of the work and to form the basis of comparable bids and may be supplemented after award of the contract with manufacturer's shop drawings, detailed working drawings and other detailed data necessary to thoroughly describe the requirements of the finished facility. In no case, however, will such supplemental information form the basis of claims by the Contractor for increased compensation and in no case will the required work described by the supplemental information be considered as extra work. In case of conflict between plans and specifications, the Engineer shall be the sole judge of which shall prevail. The Engineer shall make all necessary explanations as to the true meaning

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and intent of the plans and specifications. Any errors or omissions in the plans and specifications may be corrected by the Engineer when such corrections are necessary for the proper completion of the work.

The Contractor shall sign and stamp approved all shop or setting drawings for items of equipment on which he has bid and proposes to install, to verify field dimensions, design criteria, and materials. After the Contractor has signed and approved the as built drawings, they shall be promptly submitted to the Owner in quadruplicate for review for conformance with the design concepts of the project. The Contractor shall call Owner's attention to any deviation in the shop drawings or submittals from the requirements of the plans and specifications. No deviation from the plans and specifications shall be approved without a written Change Order. Changes or corrections may be noted by the Owner and one copy will be returned to the Contractor. The Contractor shall make any corrections required by the Owner and shall return the required number of corrected copies of shop drawings until no exception is taken. The Contractor shall direct specific attention in writing to revisions on resubmitted shop drawings other than the corrections called for by the Owner on previous submissions. Contractor's stamp of approval on any shop drawings shall constitute a representation to the Owner that the Contractor has either verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or he assumes full responsibility for doing so and that he has reviewed or coordinated each shop drawing with the requirements of the work and the Contract documents.

The shop drawings in no way become a part of the Contract documents but are furnished for informational purposes only. Regardless of corrections made in, review or approval given to such drawings by the Engineer, the Contractor shall be responsible for the accuracy of such drawings and for their conformity to the Contract plans and specifications.

14. WORKING SCHEDULES, PERFORMANCE CHARTS AND PROJECT MEETINGS.

The Contractor shall prepare and submit to the Owner for approval prior to initiating construction activities a working schedule showing the locations and the order in which the Contractor proposes to undertake the construction. A schedule will include anticipated starting and completion dates for the various sections and items included in this Contract and will also indicate scheduled delivery date for all mechanical equipment. All work provided to the contractor, including service lines shall be scheduled within a 72 hour turn around; emergency work will have an immediate response. FDOT, County and Municipal permit utilization right of way and road crossing permit installations shall be prioritized to recover from the delay associated with obtaining the permit.

Accompanying this schedule shall be a chart sufficiently large to be suitable for recording the progress of the work. The Contractor will be required to indicate actual progress on this chart and printed copies shall be made available at the end of each month. These progress charts will be used in preparing the monthly estimates to the Owner. The contractor shall furnish an electronic copy of the daily work schedule in advance of the work being done preferably prior to the beginning of the workday. Copies include Construction Inspection, Gas Sales, Dispatch and Senior Accountant. The contractor shall also provide an electronic copy of the daily completed work being done preferably at the end of that workday or the beginning of the next work day.

The following are examples of what would constitute a violation of contract:

- Contractor persistently fails to perform the work in accordance with 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 as adjusted from time to time)
- Contractor disregards Laws and Regulations of any public body having jurisdiction
- Contractor disregards the authority of Owner's Representative(s)

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- Contractor otherwise violates in any substantial way any provisions of the Contract Documents; or if the Work to be done under this Contract is abandoned, or if this Contract or any part thereof is sublet, without the previous written consent of the Owner, or if the Contract or any claim thereunder is assigned by Contractor otherwise than as herein specified, or at any time Owner's Representative certifies in writing to the Owner that the rate of progress of the Work or any part thereof is unsatisfactory or that the work or any part thereof is unnecessarily or unreasonably delayed;

The Contractor is required to attend Progress Meetings. These meetings will be scheduled on a weekly, bi-weekly, or monthly basis depending on the needs of the project. The Contractor shall bring to each meeting an updated submittal log, an updated request for information (RFI) log, a look-ahead schedule to cover the project(s) activities from the current meeting to the next meeting, and all material test reports generated in the same time period.

15. SUPERVISION AND RESPONSIBILITY OF THE CONTRACTOR.

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Owner and with other contractors in every way possible. The Contractor shall at all times have an OQ competent superintendent and field supervisors, capable of reading and thoroughly understanding the drawings and specifications, as his agent on the work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the work. Such superintendent shall be furnished irrespective of the amount of work sublet.

The Contractor shall be solely and wholly responsible for delivering the completed work in a good, safe and workmanlike condition and for the good condition of the work and materials until final acceptance and his formal release from his obligations. He shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature.

The Contractor shall indemnify and hold harmless (to a limit of \$10,000,000) the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expenses is:

- A. attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from and,
- B. is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

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

The Contractor shall be held responsible for any violation of laws or ordinances affecting in any way the conduct of all persons engaged, or the materials or methods used by him, on the work.

The Contractor shall provide and maintain at his own expense, in a sanitary condition, such portable chemical toilets accommodations for the use of his employees as are necessary to comply with the requirements and regulations of the State Department of Health & Rehabilitative Services or the County Health Department. He shall commit no public nuisance. Sanitary facilities shall be at least 500-feet from the nearest water well or waterway. Portable toilets shall have incorporated therein holding containers which shall be tightly closed, and all waste shall be pumped out and transported

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away from the site of the work weekly and disposed of properly. The portable toilet facilities shall be sanitized weekly and not become a nuisance.

Any instructions, directions, or orders from the Owner shall be given to the Contractor through his authorized representative. The Owner, except in the absence of the representative, has no authority to give directions, orders or instructions directly to the Contractor.

16. SERVING NOTICE.

Any notice to be given the Contractor under this contract shall be deemed to be served if the same be delivered to the person in charge of any office used by the Contractor or his superintendent or agent at or near the work, or deposited in a post office, postpaid, addressed to the Contractor at his place of business as set forth in this contract.

17. OBSERVATION OF THE WORK.

The Owner or his authorized representative-CGS inspector shall have free access to the materials and the work at all times for measuring or observing the same, and the Contractor shall afford him all necessary facilities and assistance for so doing. The contractor shall furnish to CGS a daily work schedule and list of all completed jobs. The notification shall be sent before the start of the work day and a distribution list shall be provided with necessary updates. After written authorization to proceed with the work and the Engineer has been engaged to act as the Owners representative, the Engineer shall:

- A. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work, he will not be responsible for the construction means, methods, procedures, techniques and sequences of construction and he will not be responsible for the Contractor's failure to perform the construction work in accordance with the Contract Documents; he will not be responsible for safety precautions and procedures in connection with the work; and during such visits and on the basis of his on-site observations as an experienced and qualified design professional he will keep the Owner informed of the progress of the work, will endeavor to guard the Owner against defects and deficiencies in the work of Contractors and may disapprove work as failing to conform to the Contract Documents.
- B. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents and assemble written guarantees which are required by the Contract Documents. Review of shop drawings by Engineer shall not relieve Contractor from his responsibility to perform his work in accordance with the plans and specifications.
- C. Consult with and advise the Owner, act as the Owner's representative at the project site, issue all instructions of the Owner to the Contractor and prepare routine Change Orders as required.
- D. Based on his on-site observations as an experienced and qualified design professional and on his review of the Contractor's applications for payment, determine the amount owing to the Contractor and approve in writing payment to the Contractors in such amounts; such approvals of payment to constitute a representation to the Owner, based on such observations and review of the data comprising such applications, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to the results of any subsequent test called for in the Contract Documents and any qualifications stated in his approval. Such partial and final payments will be as specified elsewhere herein except as modified in this paragraph.
- E. Conduct, in company with the Owner, a final site visit of the project for general conformance with the design concept of the project and general compliance with the information given by the Contract Documents and recommend in writing final payment to the Contractor.

18. EXAMINATION OF THE WORK.

The authority and duties of the resident project representatives when provided and authorized as employees of the Engineer and when the employment thereof is authorized and paid by the Owner, are limited to examining the material furnished, observing the work done and reporting their findings to the Engineer. The Engineer does not underwrite, guarantee or insure the work done by the Contractor. It is the Contractor's responsibility to perform the work in all details in accordance with the Contract Documents, and the Engineer shall never be responsible or liable to either the Owner or the Contractor or any other party by reason of the Contractor's failure to do so. Failure by the Engineer or by any project representative or other representative of the Owner engaged in on site observation to discover defects or deficiencies in the work of the Contractor shall never, under any circumstances, relieve the Contractor from his responsibility therefore to the Owner, or subject the Engineer to any liability to the Owner, the Contractor, or any other party for any such defect or deficiency.

Project representatives shall have no authority to permit deviation from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Engineer, or to delay the Contractor by failure to observe the materials and work with reasonable promptness.

The Engineer, his representatives, employees, or any resident project representative in the employment of the Engineer will not have authority to supervise, direct, expedite or otherwise control and instruct or order the Contractor or his employees in the fulfillment of the Contractor's obligation. The Owner's instructions, orders, directions and/or orders to the Contractor shall be given only through the Engineer, or his employees. The Engineer may only advise the Contractor when it appears to the Engineer that the work and/or materials do not conform to the requirements of the Contract Documents, including the Drawings and Specifications.

The payment of any compensation, irrespective of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Contractor to any project representative, is strictly prohibited, and any such act on the part of the Contractor will constitute a violation of the contract.

If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness therefore. The Contractor will furnish the Engineer the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, or such other applicable organization as may be required by law or the Contract Documents. If any such work required so to be inspected, tested or approved is covered without written approval of the Engineer, it must, if requested by the Engineer, be uncovered for observation at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided.

19. PROTECTION OF WORK AND PROPERTY.

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury, or loss, except such as maybe directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents. He shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.

From the start of the work until the completion and acceptance of the work, the Contractor shall be solely responsible for the work covered by this contract and for the materials delivered at the site intended to be used in the work and all injury or damage done to the same from whatever cause as well as any damage done by him, his agents, employees and for subcontractors in the performance

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of the work, shall be made good by him at his own expense before the final payment is made. The Contractor shall be responsible for the preservation of all trees along and adjacent to the work and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall not willfully or maliciously injure or destroy trees or shrubs, and he shall not remove or cut them without proper authorization from the Owner. Any limbs or branches of trees broken during such operations shall be trimmed with a clean cut and painted with an approved tree healing compound. The Contractor will be liable for all damages or at the option of the Owner may be required to replace or restore at his own expense, all vegetation not protected and preserved that may be destroyed or damaged.

The Contractor shall provide suitable means of protection for all materials intended to be used in the work and for all work in progress, as well as for completed work.

The Contractor shall furnish all the necessary equipment, shall take all necessary precautions and shall assume the entire cost of handling any sewage, seepage, storm, surface and flood flows which may be encountered at any time during the construction of the work. The manner providing for these occurrences shall meet with the approval of the Owner, and the entire cost of said work shall be considered as having been included in the unit prices submitted for the several items of the work to be done under this contract.

20. USE OF COMPLETED PORTIONS.

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Owner may determine.

21. CHANGES IN THE WORK.

If for any reason it be deemed necessary in the opinion of the Owner to make any variations in the scope or nature of the work, which variations increase or decrease the quantities of the work specified, or change the location to an extent not unreasonably affecting the conditions of the work, and further interpreted by the Owner as involving no classes of work other than those called for by this contract, the Contractor shall, upon written order from the Owner to that effect, make such variations. If such variations diminish the quantity of the work to be done, no claim for damages or for anticipated profits on the work that may be dispensed with shall there by accrue to the Contractor, and the value of the work dispensed with will not be included in any payments made to the Contractor. If such variations increase the amount of the work, the value of such increase shall be determined and fixed by the Owner in accordance with the quantity of such work actually done, and at the unit prices stipulated in the contract.

All major changes will be issued in a standard form which will contain a description of the work involved in the change, a reference to the proper construction drawings or revised drawings and will not be effective until signed by the Owner and Contractor.

Such alterations or changes as are mentioned in this section shall not vitiate or annul the obligations of the contract or the agreement for the work.

Should, in the opinion of the Owner, any contemplated change in the quantities of the work, or alterations thereof, materially affect the character of the work, or any part thereof, or materially affect the compensation for the same, then the work shall be classed as extra work.

22. EXTRA WORK / INCREASED COMPENSATION.

The Owner may at any time, by a written order, without notice to the Sureties, and without invalidating the contract, require the performance of such extra work or substantial changes in the work as it may find necessary or desirable. The amount of compensation to be paid to the Contractor for any extra work, as ordered, shall be determined as follows:

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- A. By unit prices named in contract and subsequently agreed upon.
- B. By a lump sum mutually agreed upon by the Owner and the Contractor; or
- C. If no such unit prices are set forth and if the parties cannot agree upon a lump sum, then by the actual net cost in money to the Contractor of the wages of applied labor (including premiums for Worker's Compensation Insurance, and Social Security taxes); plus twenty per centum (20%) as compensation for all items of profit, administration, overhead, superintendence, insurance other than Worker's Compensation Insurance, materials used in temporary structures, allowances made by the Contractor to subcontractors, additional premiums upon the performance bond of the Contractor and the use of small tools; plus the net cost to the Contractor for the materials required in the extra work; plus the cost of rental for plant equipment (other than small tools) required and approved for the extra work.

23. DEFECTIVE WORK OR MATERIALS.

If at any time any materials or workmanship should be discovered which do not comply with the plans, specifications and contract drawings, such defective work and/or material shall immediately be removed or corrected by the Contractor when notified to do so by the Owner, and such defects shall be replaced or corrected at the Contractor's expense. Any work or materials condemned by the Owner as unsuitable, potentially unsafe or improperly done shall be removed and repaired or otherwise remedied by replacement, as the Owner may require. Any defective work regulated by an established OQ covered task shall require the individual, responsible for such failure, to be OQ recertified prior to performing such covered task.

If the Contractor shall neglect or refuse to remove or replace defective work or materials within seven (7) days from the date of the notice from the Owner to do so, then the Owner may remove or cause the same to be removed and satisfactorily replaced by contract or otherwise, as they may deem expedient, and they may and are empowered, to charge the expense thereof to the Contractor. The expense so charged will be deducted and paid by the Owner out of such monies as are or may become due under this agreement, or if such monies are not sufficient to meet said expense, the additional monies shall be furnished by the Contractor, and if he refuses or neglects to provide the necessary monies they shall be provided by his Surety.