SECTION 007300 SUPPLEMENT TO GENERAL CONDITIONS

A. Definitions

Whenever the following terms occur in the contract documents, their meaning is as follows:

| | |
|---|---|
| OWNER | Nipomo Community Services District |
| GOVERNING BODY | Board of Directors<br>Nipomo Community Services District |
| CONSULTANT/ENGINEER | AECOM Technical Services<br>1194 Pacific Street, Suite 204<br>San Luis Obispo, CA 93402 |
| CONSTRUCTION MANAGER And OWNER'S REPRESENTATIVE | MNS Engineers, Inc and its Subsidiaries<br>2231 Broad Street<br>San Luis Obispo, CA 93401 |
| PROJECT | Waterline Intertie Project (WIP) – Bid Package No. 3 |
| CONTRACTOR | The individual, partnership, corporation, joint-venture, or other legal entity with whom the District has executed the construction contract. |
| PROJECT SPECIFICATIONS | The District's Contract Documents consisting of the General Conditions, Supplement to General Conditions, and the Technical Specifications.<br><br>Numbered section subjects are selected for indexing convenience only and do not indicate division of work among trades or subcontractors. |

B. Terms

1. Command-type sentences used in the contract documents refer to and are directed to the Contractor.

2. Terms and Conditions contained in this section prevail over the General Conditions.

C. Authority for the Work

The drawings, specifications, and other contract documents for the Work will be approved and adopted by the District's Governing Body prior to be released for bid.

D. Investigations and Reports

The following reports, which have been prepared for the Owner, are available for review at the office of the District Engineer:

1. Nipomo Waterline Intertie Project. Concept Design Report. April 2009. AECOM.

2. Geotechnical Report, Nipomo-Santa Maria Intertie, Blosser Road to Tefft Street, Nipomo Community Services District, CA., March 2009, Fugro West Inc.

   a. Boring Logs are in Appendix D, and are provided for information only.

3. Nipomo Community Services District Waterline Intertie Final Environmental Impact Report, State Clearinghouse No. 2005071114, March 2009, Douglas Wood & Associates, Inc.

E. Time for Completion (Contract Time) and Forfeiture Due to Delay

1. Work will be substantially completed within 215 CONSECUTIVE CALENDAR DAYS, from and after the date stated in the notice to proceed.

2. As allowed by Government Code 53069.85, forfeiture for each day completion is delayed beyond the time allowed will be at the rate of $1,000 per day.

F. Other Contracts

1. The Owner has awarded or is in the process of awarding the following contracts for other work near the project site:

   a. Waterline Intertie Project, Bid Package #1 – Santa Maria River Crossing.

2. Cooperate with the above contractors in constructing the facilities in the project herein. See Section 011100 – Coordination of Work, Permits, and Regulations.

G. Access of Owner's Representative's Personnel to Confined Spaces in Structures Under Construction

The Contractor shall provide the following assistance to the personnel of the Owner's Representative when said personnel must enter confined spaces in structures under construction or structures which have not been accepted by the Owner.

a. Training program for the Owner's Representative's personnel relevant to the specific structures being entered. Training program shall identify any required medical examinations/ certifications for use of breathing apparatus and/or other safety equipment.

b. Testing equipment and personnel to operate said equipment for testing the atmosphere in the confined spaces for oxygen deficiency, explosive gases, and toxic gases.

c. Authorized competent person to stand by each confined space while entrants are inside the space.

d. Safety equipment (e.g. breathing apparatus, harnesses, and rescue equipment) in good working order.

e. Communication equipment.

f. Access equipment (hoists and ladders).

g. Signs.

h. Alarm system.

i. Ventilation system.

2. The Contractor shall identify confined spaces on the project, mark them with warning signs per OSHA requirements, and notify the Owner's Representative that these structures now exist.

H. Utilities

1. The Consultant has endeavored to determine the existence of utilities at the site of the Work from the records provided by owners of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown in the drawings. The service connections to these utilities may not be shown in the drawings.

2. Prior to beginning the Work, the Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of existing service laterals or appurtenances on or adjacent to the

site of the Work. If the Contractor discovers utility facilities not identified in the drawings or specifications or in a position different from that shown in the drawings and specifications, it shall immediately notify in writing the Owner's Representative and the owner of the utility facility.

3. The Owner shall have the responsibility for the timely removal, relocation, protection, and temporary maintenance of existing main or trunkline utility facilities that are not indicated in the drawings and specifications with reasonable accuracy.

4. In case it should be necessary to remove, relocate, protect, or temporarily maintain a utility because of interference with the Work, the Work on such utility shall be performed and paid for as follows:

   a. When it is necessary to remove, relocate, protect, or temporarily maintain an existing main or trunkline utility facility not indicated in the drawings and specifications with reasonable accuracy, the Owner will compensate the Contractor for the costs of locating, for the costs of repairing damage not due to the failure of the Contractor to exercise reasonable care; and for the costs of removing, relocating, protecting, and temporarily maintaining such utility facilities. These costs, the work to be done by the Contractor in locating, removing, relocating, protecting, or temporarily maintaining such utility facilities shall be covered by a written change order conforming to the provisions of the General Conditions and paragraphs M and O of this Section. The Owner may make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, protect, or temporarily maintain such utility facilities or to reduce the costs of the work involved in removing, relocating, protecting, or temporarily maintaining such utility facilities. Changes in alignment and grade will be ordered in accordance with the General Conditions and paragraph M of this Section.

   b. When it is necessary to remove, relocate, protect, or temporarily maintain a utility (other than [1] existing main or trunkline utility facilities not indicated in the drawings and specifications with reasonable accuracy, or [2] existing service laterals or appurtenances when their presence cannot be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the Work) the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility or damage thereto. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with its own forces, or permitting the work to be done by the Contractor. No representations are made that the obligations to remove, relocate, protect, or temporarily maintain any utility and to pay

the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.

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

I. Safety

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damages, injury, or loss to: (1) all persons on the Site or who may be affected by the Work; (2) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and (3) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction. Contractor shall comply with all applicable laws and regulations relating to the 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. Contractor shall notify owners of adjacent property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

J. Excavation Sheeting, Shoring, and Bracing Plans for Worker Protection Required by Labor Code Section 6705

The Contractor shall submit to the Owner's Representative for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. The plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the CAL/OSHA Construction Safety Orders, 29CFR1926 Subpart P-Excavations, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

The Owner or their consultants may have made investigations of subsurface conditions in areas where the work is to be performed. If so, these investigations are identified in the Contract Documents and the records of such investigations

are available for inspection at the office of the District Engineer. The detailed plan showing the design of shoring, etc., which the Contractor is required to submit to the Owner's Representative for acceptance in advance of excavation will not be accepted by the District if the plan is based on subsurface conditions which are more favorable than those revealed by the investigations made by the District or their consultants; nor will the plan be accepted if it is based on soils-related design criteria which is less restrictive than the criteria set forth in the report on the aforesaid investigations of subsurface conditions.

The detailed plan showing the design of shoring, etc., shall include surcharge loads for nearby embankments and structures, for spoil banks, and for construction equipment and other construction loadings. The plan shall indicate for all trench conditions the minimum horizontal distances from the side of the trench at its top to the near side of the surcharge loads.

Nothing contained in this article shall be construed as relieving the Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions which are adequate for worker protection.

K. Construction Survey Staking

When the Contractor requires construction survey staking or marks, the Contractor shall notify the Owner's Representative of his requirements in writing at least ten (10) working days in advance of starting operations that require such stakes or marks.

L. Owner's Representative Status During Construction

1. Owner's Representative: The Construction Manager is the Owner's Representative during the construction period. The duties, responsibilities, and the limitations of authority of the Owner's Representative during construction are set forth in this Section and as agreed upon with the Owner per the Contract Documents.

2. Visits to Site: Owner's Representative and Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Owner's Representative deems necessary in order to observe as an experienced and qualified professional the progress that has been made and the quality of the various aspects of Contractor's executed Work to determine, in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of such visits and observations, Owner's Representative will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

   Owner's Representative's and Engineer's visits and observations are subject to all the limitations on authority and responsibility set forth in Section 007300-M-6, and particularly, but without limitation, during or as a result of visits or observations of Contractor's work, Owner's Representative or Engineer will

not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

3. Project Representative: If Owner and Owner's Representative agree, Owner's Representative will furnish a Resident Project Representative to assist Owner's Representative in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in Section 007300-M-6. If Owner designates another representative or agent to represent Owner at the Site who is not Owner's Representative's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Section 007300-M-6.

4. Clarifications and Interpretations: Owner's Representative will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Owner's Representative may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in General Conditions Section GC-9-K.

5. Determinations for Unit Price Work: Owner's Representative will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner's Representative will review with Contractor the Owner's Representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner's Representative's written decision thereon will be final and binding (except as modified by Owner's Representative to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the General Conditions.

6. Authorized Variations in Work: Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if

any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in General Conditions Section GC-9-K.

7. Rejecting Defective Work: Owner's Representative will have authority to disapprove or reject Work which Owner's Representative believes to be defective, or that Owner's Representative believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's Representative will also have authority to require special inspection or testing of the Work as provided in General Conditions Section GC-6, whether or not the Work is fabricated, installed, or completed.

8. Shop Drawing Submittals, Change Orders, and Payments:

   a. In connection with Owner's Representative's authority as to shop drawing submittals, see paragraph S of this Section.

   b. In connection with Owner's Representative's authority as to Change Orders, see General Conditions Section GC-4-D.

   c. PAYMENTS: In connection with Owner's Representative's authority as to Applications for Payment, see General Conditions Section GC-9.

9. Decisions on Requirements of Contract Documents and Acceptability of Work: Owner's Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Owner's Representative in writing, in accordance with the provisions of General Conditions Section GC-9-K, with a request for a formal decision.

   When functioning as interpreter and judge under this paragraph, Owner's Representative will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Owner's Representative pursuant to this paragraph with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in General Conditions Section GC-9-H) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

10. Limitations of Owner's Representative's Authority and Responsibility: Neither Owner's Representative's authority or responsibility under this Section or under any other provision of the Contract Documents nor any decision made by Owner's Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Owner's Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Owner's Representative to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

    Owner's Representative will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner's Representative will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

    Owner's Representative will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

    Owner's Representative's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by General Conditions Section GC-9-H will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

    The limitations upon authority and responsibility set forth in this Section shall also apply to Owner's Representative's Consultants, Resident Project Representative, and assistants.

M. <u>Authorized Changes in the Work</u>

1. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive, as defined below. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

2. Work Change Directive:

a. In lieu of a Request for Quote (RFQ), Owner may issue a Work Change Directive (WCD) for the Contractor to proceed with a change for subsequent inclusion in a Change Order.

b. WCD will describe changes in the work, both additions and deletions, with attachments as necessary to define details of the change, and will designate the method of determining any change in the Contract Price and any change in Contract Time.

c. Owner will sign and date the WCD as authorization for the Contractor to proceed with the changes.

d. Contractor may sign and date the WCD to indicate agreement with the terms therein.

3. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in General Conditions Section GC-9-K.

N. Unauthorized Changes in the Work

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in a fully executed (1) written amendment, (2) change order, or (3) work change directive, except as otherwise stated in the General Conditions.

O. Execution of Change Orders

1. Owner and Contractor shall execute appropriate Change Orders recommended by Owner's Representative (or Written Amendments) covering:

a. Changes in the Work which are:

(1) Ordered by Owner pursuant to Section 007300-M,

(2) Required because of acceptance of defective Work under paragraph R.8 of this Section or Owner's correction of defective Work under paragraph R.9 of this Section, or

(3) Agreed to by the parties.

b. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for

Work actually performed in accordance with a Work Change Directive; and

c. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Owner's Representative pursuant to General Conditions Section GC-9-K; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as Owner and Contractor may agree in writing.

P. Substitutes and "Or-Equals"

1. Contractor shall submit sufficient information to allow Owner's Representative to determine that the item of material or equipment proposed is essentially equivalent to that named in the Contract Documents and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Owner's Representative from anyone other than Contractor.

2. Application of proposed substitute or "or-equal" shall be as follows:

   a. Made in writing per the submittal process as described in Specification Section 013300.

   b. Include certification that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified.

   c. Identify all variations from that specified, and available engineering, sales, maintenance, repair, and replacement services.

   d. Include itemized estimate of all costs or credits that will result directly from of indirectly from use of substitute item, including costs of redesign.

   e. Owner's Representative may require Contractor to furnish additional data about the proposed substitute.

3. Owner's Representative will be the sole judge of acceptability of substitutes or "or-equals". No "or-equal" or substitute will be installed or utilized until Owner's Representative's review is complete, which will be evidenced by either a Change Order for a substitute, or an approved Submittal for an "or-

equal". Owner's Representative will advise Contractor in writing of any negative determination.

4. Owner's Representative will record time required by Owner's Representative and Owner's Representative's Consultants in evaluating substitutes proposed or submitted by Contractor pursuant to this Section P, and in making changes in the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) occasioned thereby. Whether or not the Owner's Representative approves the substitute item so proposed or submitted by the Contractor, Contractor shall reimburse Owner for the charges of Owner's Representative and Owner's Representative's Consultants for evaluating each such proposed substitute.

Q. Delays

1. Delays beyond the Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in General Conditions Section GC-9-K. Delays beyond the control of Contractor shall include, but not be limited to, fires, floods, epidemics, abnormal weather conditions, or acts of God.

2. Delays within the Contractor's control: The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

3. Delay's beyond the Owner's and Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

4. Delay Damages: In no event shall Owner or Owner's Representative be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

   a. Delays caused by or within the control of Contractor; or

   b. Delays beyond the control of both Owner and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, or acts of God.

   Nothing in this Section bars a change in Contract Price pursuant to this Section to compensate Contractor due to delay, interference, or disruption

directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

R. Tests and Inspections; Correction, Removal or Acceptance of Defective Work

1. Notice of Defects: Prompt notice of all defective Work of which Owner or Owner's Representative has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Section.

2. Access to Work: Owner, Owner's Representative, Owner's Representative's Consultants, other personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

3. Tests and Inspections

   a. Contractor shall give Owner's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

   b. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

      (1) for inspections, tests, or approvals covered by paragraphs R.3.C. and R.3.D of this Section, below;

      (2) that costs incurred in connection with tests or inspections conducted pursuant to paragraph R.4.B of this Section shall be paid as provided in said paragraph R.4.B; and

      (3) as otherwise specifically provided in the Contract Documents.

   c. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Representative the required certificates of inspection or approval.

   d. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals

required for Owner's and Owner's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Owner's Representative.

e. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner's Representative, it must, if requested by Owner's Representative, be uncovered for observation.

f. Uncovering Work as provided in paragraph R.4. of this Specification Section shall be at Contractor's expense unless Contractor has given Owner's Representative timely notice of Contractor's intention to cover the same and Owner's Representative has not acted with reasonable promptness in response to such notice.

4. Uncovering Work

a. If any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered for Owner's Representative's observation and replaced at Contractor's expense.

b. If Owner's Representative considers it necessary or advisable that covered Work be observed by Owner's Representative or inspected or tested by others, Contractor, at Owner's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

c. If it is found that such Work is defective, Contractor shall pay 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 relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in General Conditions Section GC-9-K.

d. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the

Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in General Conditions Section GC-9-K.

5. Owner May Stop the Work: If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

6. Correction or Removal of Defective Work: Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner's Representative, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

7. Correction Period:

   a. If within one year after the date of Substantial Completion 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 or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

      (1) Repair such defective land or areas, or

      (2) Correct such defective Work or, if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

      (3) Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

If Contractor 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 Work corrected or repaired or may have the rejected Work removed and replaced, and 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) plus 25% arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

b. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

c. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Section, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

d. Contractor's obligations under this Section are in addition to any other obligation or warranty. The provisions of this Section shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

8. Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Owner's Representative's recommendation of final payment, Owner's Representative) prefers to accept it, Owner may do so. Contractor shall pay 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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Owner's Representative as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Owner's Representative's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in General Conditions Section GC-9-K. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

9. Owner May Correct Defective Work

a. If Contractor fails within a reasonable time after written notice from Owner's Representative to correct defective Work or to remove and replace rejected Work as required by Owner's Representative in accordance with paragraph R.6. of this Section, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct and remedy any such deficiency.

b. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Owner's Representative and Owner's Representative's Consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

c. 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) incurred or sustained by Owner in exercising the rights and remedies under this Section will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in General Conditions Section GC-9-K. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

d. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Section.

S. <u>Shop Drawing Submittals</u>

1. The Contractor shall review, mark with its approval, and submit for review by the Owner's Representative Shop Drawing Submittals as called for in

Specification Section 013300, as requested by the Owner's Representative, or as otherwise required by the Contract Documents.

2. Shop Drawing Submittals shall be complete in all respects. If the Shop Drawings show any deviations from the requirements of the plans and specifications because of standard shop practices or other reasons, the deviations and the reasons therefor shall be set forth in the letter of transmittal.

3. By submitting Shop Drawings, the Contractor represents that material, equipment, and other work shown thereon conforms to the plans and specifications, except for any deviations set forth in the letter of transmittal.

4. Per Specification Section 013300, the Owner's Representative will return copies of the shop drawing submittals to the Contractor with any comments noted thereon. If so noted by the Owner's Representative, the Contractor shall correct the drawings and resubmit them per Specification Section 013300.

5. The review by the Owner's Representative is only for general conformance with the design concept of the project and general compliance with the plans and specifications and shall not be construed as relieving the Contractor of the full responsibility for: providing materials, equipment, and work required by the Contract; the proper fitting and construction of the work; the accuracy and completeness of the Shop Drawings; selecting fabrication processes and techniques of construction; and performing the work in a safe manner.

6. No portion of the work requiring a Shop Drawing submittal shall be commenced until the submittal has been reviewed by the Owner's Representative and returned to the Contractor with a notation indicating that resubmittal is not required.

7. If the Contractor believes that any Shop Drawing or communication relative thereto calls for changes in the work for which the contract amount or time for completion should be changed, it shall not proceed with the changes in the work so called for and shall promptly notify the Owner's Representative in writing of its estimate of the changes in the Contract amount and time for completion it believes to be appropriate. No payment for changes in the work will be made and no change in the time for completion by reason of changes in the work will be made, unless the changes are covered by a written Change Order approved by the Owner in advance of the Contractor's proceeding with the changed work.

END OF SECTION