



# LYNX Finance & Audit Committee

## *A G E N D A*

**November 5, 2014**

**10:00AM**

**LYNX Central Station**

**Second Floor Room #215**

- Call to Order
- Approval of Prior Meeting Minutes
- Compressed Natural Gas (CNG) Contract -  
Final Negotiations
- Adjournment

**LYNX**  
**Central Florida Regional Transportation Authority**  
**Finance & Audit Committee Meeting Minutes**

**PLACE:**        **LYNX Central Station**  
                  **455 N. Garland Avenue**  
                  **Conference Room, 2<sup>nd</sup>. Floor**  
                  **Orlando, FL 32801**

**DATE:**         **September 18, 2014**

**TIME:**         **9:00 AM**

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**Members in Attendance:**

Chris McCullion, City of Orlando  
Lisa Buscher, FDOT  
Ray Walls, Orange County  
Zoraida Cruz, Osceola County  
Joe Pennisi, Seminole County

**LYNX Staff in Attendance:**

John Lewis, Chief Executive Officer  
Blanche Sherman, Director of Finance

**Members Absent:**

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**1. Call to Order/Introduction**

Blanche Sherman, Director of Finance, welcomed the committee members at 9:00 AM to the first meeting of the Finance & Audit Committee. John Lewis, Chief Executive Officer welcomed and thanked members for attending to provide input and thoughts on the items being covered. John asked for introductions of names and roles of all meeting attendees.

**2. Audit Agenda Items**

✓ **Amendment of Administrative Rule 2**

John Lewis and Blanche Sherman discussed the draft of Administrative Rule 2 which includes a name change of the Audit Committee to the Oversight Committee and establishment of two sub-committees: Finance & Audit and Risk Management. The Finance & Audit Committee will be making recommendations to staff and to the Oversight Committee. The final version of Amendment of Administrative Rule 2 will be included in the Board of Directors meeting package being sent out today.

✓ **Election of Officers**

Blanche Sherman discussed election of officers to include a Chairman and Vice-Chairman. John Lewis recommended waiting until the Board of Directors has approved formal establishment of the Committee to elect officers.

Discussion ensued about setting parameters/protocols for these meetings including compliance with Sunshine Law/ Public Records. This meeting was open to the public, notices were posted, and the meeting was recorded.

The Committee also discussed whether the meeting schedule would be on a monthly or bi-monthly basis. John Lewis mentioned the Board's intention to have the committee meetings on a bi-monthly schedule with a possible change to monthly meetings during budget season.

The Committee agreed to hold off on electing officers at this time.

✓ **Discussion on Healthcare Costs, Recommendations, and Future Plans**

Randy Singh, Orange County, asked about the expectation of outside attendees contributing to the meeting discussions. John Lewis stated the Committee would be following the Audit Committee with input taken from anyone but only Committee members being able to vote.

Blanche Sherman provided an overview of the challenges being faced by LYNX in increased healthcare costs with estimates fluctuating from an initial 15% increase to a high of 28% and recently looking at a decrease of 1.9%. Blanche recognized Josh Rubich, AJ Gallagher, to make a presentation.

Josh discussed his role in advising on benefits and healthcare costs and the fluctuation in projections from May to July taking into consideration that LYNX is smaller in size than the funding partners. The larger the size the further out projections can be made. The presentation covered the following:

- **Renewal History**

Josh went over the renewal history for LYNX. Moving to Florida Blue in 2012 resulted in a 16% decrease in premium in relation to the Orange County plan, a 4% increase in 2013 moving to Cigna, and a 16% increase in 2014 by remaining with Cigna. The overall increase in premium over time is 1.3% per year.

Questions concerning having Florida Blue for only one year and if the increases were driven by claims experience were answered by Josh. New carriers have the challenge of not having previous claims data. Carriers like to have the data to hedge for future claims. When the service went out to bid, Florida Blue did not meet the numbers. Cigna won the bid and then adjusted the second year based on

claims experience. Carriers also face market pressures and market trends in addition to claims activity.

- **Savings**  
Josh discussed the \$1.1 million savings by moving to Florida Blue and the \$1.3 million in savings between actual claims and what was paid to Orange County assuming an estimate of \$70 per employee per month in fees/stop loss coverage.
- **Claims Review**  
Josh discussed the statistics in the presentation of claims experience noting that the percentages grow as pharmacy expenses are paid earlier in the year and claims are paid later. Out of network claims in 2014 were a large amount. Medicare reimbursement was minimal for LYNX. Premiums vs. Claims increased in 2014 at beginning of the year. This happens anytime there is a re-issue. The 2014 year-to-date (January-August 2014) paid claims are on a par with the rolling twelve (12) months paid claims (September 2013 – August 2014).

The group discussed the demographics of the employees with most of the employees being hourly, primarily male, and with an average age of 50 years. Hourly employees tend to not have primary doctors and are not used to going to a doctor. Deductible amounts were discussed with \$1,250 for single employees and \$2,500 for a family under the current plan.

Discussion ensued about the trends in spending with a large amount being spent on a small group of employees and much less being spent on other employees. The transportation group has the largest number of employees where drivers are sitting most of the day and have little time for meals other than fast food. Maintenance employees are more active and stationary. This is the same throughout the industry. Diabetes has a significant impact on healthcare costs - 15% at LYNX. The national average is 9%.

Josh discussed that the vast majority of employees that did not meet their deductible or out-of-pocket expenses. The number of employees that met the maximum out-of-pockets expenses in 2014 was forty-one (41) for individuals and forty-one (41) for families.

- **Renewal Summary**  
Josh is currently in negotiations with Cigna and looking at costs for LYNX to be fully insured. John Lewis and Blanche Sherman discussed the factors that were taken into consideration in negotiating new rates- increasing deductibles which reduces premiums offset with increased Health Savings Account (HSA) amounts. Rewards for positive behavior were also discussed including diabetes, smoking cessation, and walking programs. Bio-metric screenings and annual physicals are required to receive the full amount of the HSA.

The group discussed the factors at length mentioning similar programs and plan designs at their respective agencies. Concern for positive budget impacts while considering the effect on employees and their families was discussed. John and Blanche discussed the balancing of employees' needs while staying within budget limits being an important consideration during this process.

- **HSA Funds**

Josh discussed the change in HSA funds from \$750 single and \$1,250 family in the current plan to \$1,250 single and \$2,250 family in the proposed plan.

The group discussed the implications of accumulated funds to employees not using the funds- keeping an eye on the carry-forward amounts. There was also a discussion about possible increased usage of the HSA funds-being fair to employees without penalizing employees in unfortunate circumstances. The group discussed looking at why employees are not going to doctors, changing the mindset to encourage relationships with employees' doctors and increasing preventative care. Preventative care does not impact the increase in deductible.

Discussion ensued about the internal privacy issue of bio-metric screening information if LYNX would go to a self-insured plan.

- **Renewal and Proposed Contribution Structure**

Josh reviewed the medical cost comparisons of the current plan to the renewal plan and the medical insurance contribution summary of the various plan options.

- **Benchmarking**

Josh mentioned that the assumption is that the funding partners will continue their current plans in 2015. LYNX spends less money in comparison with their funding partners with the exception of Orange County on the single rate, particularly on their dependents. Children on the plan are subsidizing the adults. The group discussed current twelve (12) months claims and rates trends and a concern for the impact of ObamaCare. Increased costs have impacted all committee members.

- **2015 Considerations**

Josh stated that the summation was done and evaluated from a self-insured perspective. John stated that upon reviewing the adjusted renewal in the aggregate, it was internally decided to:

- 1) Manage this year's costs within budget projections
- 2) Evaluate the potential of going to a self-insured plan next year

- ✓ **Compressed Natural Gas (CNG) Project**

John Lewis discussed the receipt of an unsolicited proposal last fall to convert diesel/bio-diesel buses to Compressed Natural Gas (CNG) fuel. Fuel savings are available using

CNG and fuel hedging is also available. Many agencies have converted to 100% CNG fuel. CNG fuel is not new to the transit industry but the initial cost to convert has made it difficult to convert. The LYNX fleet is federally funded through the Federal Transit Administration (FTA). That agency does not have a way to fund the conversion. LYNX is looking at a plan to do the conversion, upon Board approval, on an incremental basis. Federal funding also means a vehicle must be kept for its useful life (9-10 years) or 500,000 miles.

John further discussed the steps that have been taken including negotiation authority given by the Board, Stifel Nicolaus consultants being brought in, and a mature proposal in final review to make final recommendations to the Board.

John recognized Margaret Lezcano, Stifel Nicolaus, to make a presentation. Margaret stated that she has done presentations three times to the Audit Committee and two times to the Board. She reviewed the historical presentation that was given to the committee members and provided an updated timeline. She introduced Jorge Herrera and Walt Bussels, Nopetro, who were available to answer questions.

Margaret provided an overview of Nopetro, potential benefits to LYNX including:

- Fuel cost savings over bio-diesel
- Revenue from third party sales
- Diversifying fuel consumption

and the services to be provided which include:

- Incurring capital costs to construct CNG station
- Modifying the existing maintenance facility
- Training LYNX employees on fueling and fluids to include ongoing trainers being trained
- Maintaining all the fueling facilities
- Working on leasing of buses
- 8 ½ cents royalty on all third party sales
- Emphasizing contingency planning for catastrophic occurrences providing a transportable FuelMule

Margaret and Alex Bugallo, Stifel Nicolaus, discussed the initial proposal to LYNX as a menu of options which are currently being negotiated. The fleet currently has 310 transit buses. Margaret discussed LYNX' proposed commitments to start the contract with the purchase of at least thirty-five (35) CNG transit buses, continuing to purchase 50% of future transit buses as CNG, buying 500,000 Diesel Gas Equivalent (DGE) units annually as a take or pay commitment for fifteen (15) years, and fueling all CNG buses at a Nopetro station in Orange County. The totality of the contract would be for twenty (20) years. At the end of the twenty years, LYNX has no further obligation but has the option to continue the contract.

John and Blanche discussed the terms of the relationship is a minimum of fifteen years due to the useful life of the vehicle. This is a five year commitment in terms of buying buses. The recommendation to the Board will be to not go beyond one replacement cycle giving LYNX an initial fifteen (15) year relationship with Nopetro.

Alex discussed the cash flow model and criteria used for the different scenarios in the presentation including the CNG future pricing (includes marketing & distribution and compression fee), conversion to DGE (BTU used), changes in maintenance fees for CNG buses, payback period and other capital costs built into the model.

Discussion ensued over the acquisition of land, building the CNG station and upgrading the LYNX Operations Center (LOC) maintenance facility. The estimated investment would be approximately \$10 million - \$8.5 million for station and \$2.1 million for maintenance facility modifications. Blanche discussed the financing of capital costs by Nopetro with payment over a ten year period.

Other topics discussed were fluctuating CNG prices which are being projected to be lower in comparison to crude oil prices over the next 20 years; ability to meet the 500,000 DGE (units of CNG) usage requirement (no problem for the number of replacement buses to be ordered); the future and transport of CNG fuel, determination of the royalty payment; third party sales limited to a specific lane with no access to the LYNX side of the station and LYNX having first priority when fueling; the purchase of the land and timing with the bus purchases.

Discussion ensued about the timing and potential gap between LYNX and Nopetro with the commitments being made on both sides. Every attempt has been made to minimize the risk to both parties.

Margaret and John discussed the timeline and flexibility for LYNX. The initial plan modifications for the maintenance facility have been reviewed by LYNX staff and site plans have been approved. The final negotiations will go to the next Board meeting in November for approval. The acquisition of the first buses will take nine to twelve (9 to 12) months to get from Gillig. The first order will be placed in November with Board approval.

✓ **Other Business**

No other business was discussed.

✓ **Next Meeting**

No action was taken on this item.

**The meeting adjourned at 11:25 AM.**

# **LYNX Finance & Audit Committee Agenda**

## **Agenda Item #1**

**To:** LYNX Finance & Audit Committee Members

**From:** Blanche W. Sherman, Director of Finance

**Phone:** 407.841.2279 extension 6100

**Item Name:** Compressed Natural Gas (CNG) Contract – Final Negotiations

**Date:** 11/05/14

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Over the past year, LYNX' staff actively explored the opportunity to convert the LYNX fleet to utilize compressed natural gas (CNG) by engaging in a public private partnership with NoPetro.

NoPetro' proposal dated September 13, 2013 was diligently reviewed by LYNX staff and determined to be valid and essential to the Authority. The comprehensive review of the proposal included ongoing financial and operational evaluations by LYNX staff and the project financial advisor, Margaret Lezcano, Managing Director of Stifel, Nicolaus & Company, Incorporated (Stifel). Also, LYNX funding partners were apprised and involved in the development of this effort through regular updates to LYNX' Oversight Committee.

NoPetro is proposing to provide the following services for LYNX:

- 1) Design, finance, build, operate and maintain a fast-fill CNG fueling station;
- 2) Finance, procure, and deliver thirty-five (35) new CNG transit buses;
- 3) Finance and perform necessary improvements to make LYNX' maintenance facility CNG compliant;
- 4) Train LYNX' employees on CNG fueling and CNG bus maintenance procedures; and
- 5) Provide LYNX with royalty payments on all third party sales made at the station.

As one of the leading transit agencies in the State of Florida, LYNX' operations have a significant impact on the daily lives of many Floridians. Based on the dramatic economic and environmental benefits inherent in the transition from diesel to less expensive, clean, and domestic CNG fuel, LYNX has the opportunity to significantly reduce its annual budgetary fuel outlay over the next fifteen (15) to twenty (20) years.

The time is ideal for LYNX to transition its bus fleet to CNG. Transit agencies across America are aggressively transitioning their transit bus fleets to capture low CNG fuel prices. The abundant and domestic supply of CNG has resulted in the price of CNG consistently being substantially lower than diesel by approximately \$1.50 per diesel gallon equivalent ("DGE"). CNG is cleaner than diesel, reducing the carbon pollution by thirty-three percent (33%).



## **LYNX Finance & Audit Committee Agenda**

Because CNG is domestic, price stability is enhanced along with national security and the U.S. economy. Also, CNG buses are now well proven technologically and commercially, offering the same operating performance as their diesel counterparts, but at lower lifetime costs with added environmental benefits.

The biggest economic and operating impediment preventing LYNX from immediately reaping the benefits of CNG is the lack of fueling infrastructure. The comprehensive approach of NoPetro' proposal to design, finance, and build the CNG fueling station and perform the necessary improvement to LYNX' maintenance facility eliminates any upfront capital contribution by LYNX, and expedites the project's implementation, while minimizing LYNX's risk.

Based on the financial evaluation of the proposal performed by Stifel, LYNX should experience positive cash flows in year three (3) of the contract. As a result of the favorable comprehensive review, LYNX staff and the project financial advisor recommended that LYNX begin negotiations with the Proposer. On May 22, 2014, LYNX Board of Directors authorized LYNX' Chief Executive Officer (CEO) or designee to begin negotiations with NoPetro for the Compressed Natural Gas (CNG) Unsolicited Proposal to be brought before the Board of Directors for final recommendations and approval.

LYNX staff and Margaret Lezcano, Managing Director of Stifel, will be presenting a detailed overview of the final negotiations with NoPetro at the November 13, 2014 Oversight Committee meeting. The negotiations of NoPetro' proposal has resulted in two separate agreements- the Fuel Purchase Agreement and the Facility Modification Construction Agreements. The following is a summary of the key business matters that LYNX has negotiated thus far with very minor issues pending:

# LYNX Finance & Audit Committee Agenda

## CNG PROJECT: FINAL FUEL PURCHASE CONTRACT

Business Matter	Original Proposal	Final Agreement
CNG Bus Purchases / Leases	At least 50% of all new buses must be CNG for a period of 20 years	100% of new buses must be CNG for a period of 5 years
Take or Pay Commitment for CNG	A minimum purchase on a take or pay basis of 500,000 DGE's per year for 15 years	No change
Length of Contract	20 years with no obligation to purchase CNG past 15 years, but if LYNX chooses to use CNG, it must purchase from Nopetro	Agreement can be revisited after five years if consuming CNG has material adverse effect on LYNX
Applicable Government Grants / Rebates	100% benefit to Nopetro	Benefit divided 50%/50% between Nopetro and LYNX
Royalty Payments from 3 <sup>rd</sup> Party Sales	\$0.08 per DGE	\$0.08 per DGE with annual CPI increase
Liquidated Damages	Not addressed	Hourly penalty imposed for delays in meeting fueling schedule
Audits	Not addressed	Annual, quarterly, reporting, true-up provisions

# LYNX Finance & Audit Committee Agenda

## CNG PROJECT: FINAL FUEL PURCHASE CONTRACT

Business Matter	Original Proposal	Final Agreement
<b>Components of CNG Cost per DGE</b>	<ul style="list-style-type: none"><li>• Cost of natural gas</li><li>• Taxes and delivery costs</li><li>• Compression Fee</li></ul>	<ul style="list-style-type: none"><li>• Cost of natural gas</li><li>• Taxes and delivery costs</li><li>• Compression Fee</li><li>• Adder for maintenance facility modifications</li><li>• Adder for staffing, fueling and fluids on premises</li></ul>
<b>“Favored Nation” Clause</b>	Not addressed	Included
<b>Covered LYNX Vehicles</b>	Any LYNX CNG bus to be fueled at station	Only LYNX CNG buses scheduled for service from John Young Parkway Bus Depot must use station
<b>Dispensing Fluids at Station</b>	Not addressed	Nopetro will provide service

Please find attached for your review copies of the Fuel Purchase Agreement and the following American Institute of Architects (AIA) contract documents for NoPetro to undertake the facility modifications:

1. Standard Form of Agreement Between Owner and Contractor;
2. Methodology for Payment of Construction Cost Under Maintenance Facilities Construction Contract;
3. Project Schedule; and
4. General Conditions of the Contract for Construction.

**CNG VEHICLE FUEL PURCHASE AGREEMENT**

**BY AND BETWEEN**

**CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY (d/b/a LYNX)**

**AND**

**NOPETRO-ORLANDO, LLC**

**DATED**

**November \_\_, 2014**

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**Schedule of Exhibits:**

- Exhibit A-1- Description Of The Premises
- Exhibit A-2- Description Of The Bus Depot And Maintenance Facility
- Exhibit B-1- Fuel Price And Minimum Fuel Quantities
- Exhibit B-2- Fuel Price And Minimum Fuel Quantities Defined Terms
- Exhibit C - Description Of Station
- Exhibit D - Notices
- Exhibit E - Insurance
- Exhibit F - Milestone Schedule
- Exhibit G - Performance Bond

## CNG VEHICLE FUEL PURCHASE AGREEMENT

**THIS CNG VEHICLE FUEL PURCHASE AGREEMENT** (this “Agreement”), is made and effective this \_\_\_\_ day of November, 2014 (“Effective Date”) by and between the **CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY (d/b/a LYNX)**, a public body politic and corporate under the laws of the State of Florida (“Buyer”), and **NOPETRO-ORLANDO, LLC**, a limited liability company organized under the laws of the State of Florida (“Seller”). Buyer and Seller are each a “Party,” and collectively are the “Parties.”

### RECITALS

**WHEREAS**, Buyer desires, through a public-private collaboration with Seller, to promote the development, construction and operation of a CNG fueling station on premises to be owned by Seller to fuel buses and other vehicles owned, leased and/or operated by Buyer and third parties that use CNG fuel, and thereby promote the use of CNG and reduce the consumption of gasoline and diesel fuel; and

**WHEREAS**, Seller was selected by Buyer in connection with an unsolicited proposal in accordance with Buyer’s unsolicited proposal guidelines to develop, finance, construct, operate and maintain a CNG fueling station on premises to be owned by Seller and to sell CNG to Buyer for use in buses and/or other vehicles owned, leased and/or operated by Buyer and to third parties for use in vehicles operated by third parties; and

**WHEREAS**, as set forth in that certain Maintenance Facility Modifications Construction Agreement dated on or about the date hereof (the “Maintenance Facility Modifications Construction Agreement”), between the Buyer and Nopetro (as hereinafter defined), Buyer desires to upgrade or have Nopetro upgrade its bus depot and maintenance facility located at John Young Parkway, which is in close proximity to the CNG fueling station (the “Station”) (as hereinafter defined) to be constructed by Nopetro, to be used for servicing and maintaining buses and other vehicles owned, leased, and/or operated by or for Buyer including vehicles that are fueled by CNG; and

**WHEREAS**, Buyer desires to purchase from Seller and Seller desires to sell to Buyer at the Station all of Buyer’s requirements for CNG (but in no event less than the Minimum Annual Volume (as defined below)), in order to fuel buses and other vehicles owned or leased and operated and scheduled by Buyer out of its Bus Depot and Maintenance Facility (as hereinafter defined) and which require CNG, in furtherance of the efficient, cost-effective and reliable performance of its governmental purpose and essential functions.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller do hereby covenant and agree as follows:



## **ARTICLE I** **DEFINITIONS**

**Section 1.1. Definitions.** Capitalized terms listed in this Section 1.1 shall have the meanings set forth below unless the context requires otherwise.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls or is controlled by or is under common control with such Person.

“Affiliated Buyer's Vehicles” means buses, transport and maintenance vehicles, automobiles and other vehicles which may be owned by a Buyer's Affiliate which are fueled by CNG and used in conjunction with providing transportation services for and in behalf of the Buyer.

“Agreement” means this CNG Vehicle Fuel Purchase Agreement by and between Buyer and Seller, as the same may be amended from time to time in accordance with the terms thereof.

“Applicable Buyer's Vehicles” means those Buyer's Vehicles which are scheduled at and from the Bus Depot and Maintenance Facility. Nothing contained in this Agreement shall require the Buyer to schedule any vehicles at the Bus Depot and Maintenance Facility, and the Buyer may, from time to time, reschedule its Buyer's Vehicles from time to time throughout its system.

“Applicable Laws” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, orders or directives of any Governmental Authority which are binding on a Party or any of its property relating to this Agreement.

“Available CNG Fleet” means, on any particular day, that part of Buyer's total active fleet that is used for scheduled service and that is a CNG Bus. A CNG Bus will only be “used for scheduled service” if it is delivered to the Station for fueling no later than 6:00 p.m.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

“Base Period” means the period from the Commencement Operations Date through the fifteenth (15<sup>th</sup>) anniversary thereof.

“Bus Depot and Maintenance Facility” means that real property owned and operated by Buyer, located on John Young Parkway, which is used for parking, cleaning, servicing and maintaining transit buses owned, leased or operated by or for Buyer, as described in Exhibit A-2.

“Buyer” has the meaning set forth in the first paragraph, and includes its successors and permitted assigns.

“Buyer Default” has the meaning set forth in Section 13.2.

“Buyer-Designated Fueling Lanes” means the transit style fast-fill vehicle lanes located at the Station designated by Seller to dispense Fuel to Buyer's Vehicles. Initially, the Station shall contain four (4) Buyer-Designated Fueling Lanes which shall be separate and apart from the Public Access Fueling Lanes, with the ability to add up to two (2) additional vehicle lanes as necessary and which Buyer-Designated Fueling Lanes shall be for the exclusive use of fueling the Buyer's Vehicles or, if directed by the Buyer, Affiliated Buyer's Vehicles.

“Buyer's Affiliates” means those persons who provide transportation services for and on behalf of the Buyer, such as, for example, the third party which may provide paratransit services under contract with the Buyer.

“Buyer's Initial CNG Bus Acquisition Obligation” means the obligation of the Buyer to acquire through purchase or lease thirty five (35) CNG Buses.

“Buyer's Vehicles” means any and all buses, transport and maintenance vehicles, automobiles and other vehicles owned or leased and operated by Buyer which are fueled by CNG, whether or not such vehicles are located, stored, or otherwise maintained or scheduled at the Bus Depot and Maintenance Facility. Unless elected by the Buyer in writing, vehicles which are not operated directly by the Buyer, but which may be operated for and on behalf of the Buyer, such as by any third party providing paratransit services, would not be included in this term.

“CNG Bus” means a Buyer's Vehicle in the nature of a transit bus which uses CNG Fuel.

“CNG” or “CNG Fuel” means compressed natural gas.

“Commercial Operations Date” means the date that Seller declares by notice to Buyer that construction of the Station is substantially complete and the Station is available to dispense Fuel, which date shall be no later than the Scheduled Station Completion Date.

“Conditions Precedent” has the meaning set forth in Section 2.2.

“Confidential Information” means information provided by one Party to the other Party in connection with the negotiation or performance of the Agreement, any audit or review of financial books and records, or other Project Agreements that is clearly labeled or designated by the disclosing Party as “confidential,” “proprietary” or “trade secret” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing.

“Contract Rate” means the lower of (i) the prime rate on corporate loans at large U.S. money center commercial banks as set forth in the Wall Street Journal “Money Rates” table under the heading “Prime Rate,” or any successor thereto, on the first date of publication for the

applicable calendar month, plus four percent (4%) and (ii) the maximum rate permitted by applicable law.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers (CPI-U).

“Contract Year” means a period of one year commencing on October 1, provided however that the fractional period of less than twelve (12) months from the Commercial Operations Date to the immediately following September 30 and the fractional period of less than twelve (12) months from October 1 to the date on which the Agreement expires or is earlier terminated in accordance with the terms thereof shall be deemed Contract Years.

“Continuing Performance Bond” means a performance bond provided to the Buyer by the Seller for each Contract Year on a surety acceptable to the Buyer and otherwise substantially in the form attached as Exhibit G providing assurance to the Buyer of the continuous fulfillment by the Seller of its obligation to provide CNG Fuel to the Buyer..

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses directly and reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations and/or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with such termination or new arrangement, **provided, however,** attorneys' fees and expenses cannot be imposed upon the Buyer if prohibited by applicable law.

“DGE” has the meaning set forth in Exhibit B-2.

“Dispute” has the meaning set forth in Section 14.13.

“Effective Date” means the date set forth in the caption of this Agreement.

“Event of Default” means a Buyer Default or Seller Default, as applicable, which with notice or the passage of time, or both, would constitute a default under this Agreement.

“Financing Party” means any third party providing an equity investment or debt financing or refinancing for the development, equipping, construction, installation, operation, maintenance, expansion or repair of the Station and other improvements, systems or facilities of Seller on the Premises, the improvements to be undertaken by Seller to the Bus Depot and Maintenance Facility pursuant to the Maintenance Facility Modifications Construction Agreement, including credit support, credit enhancement or other loan, credit, working capital, letter of credit facility, liquidity facility or natural gas price risk management services, as well as collateral agents, administrative agents and trustees.

“Fluids and Lubricants” means various fluids and lubricants related to the operation of the Buyer's Vehicles, other than Fuel, and which fluids and lubricants are purchased by the Buyer but located at the Station in the Buyer-Designated Fueling Lanes for the Buyer's Vehicles. Fluids and Lubricants would include, for example, window washing solutions and motor oil.

“Force Majeure” has the meaning set forth in Section 14.9.

“Fuel” means CNG.

“Fuel Price per DGE” means the price to be paid by Buyer for Fuel, as calculated in accordance with Exhibit B-1.

“Fuel Requirements” means Buyer’s actual fuel requirements for Fuel for Applicable Buyer's Vehicles in any Contract Year.

“Fuel Tank or Tanks” means the fuel tanks on the Buyer's Vehicles into which CNG fuel will be used.

“Fueling Commencement Time” means the time when fueling is required to commence at the Station for the Available CNG Fleet so that the Buyer's Vehicles will be able to each meet its respective Scheduled Departure Time.

“Fueling Pump Compression Standard” means the compression to which the CNG Fuel is compressed at the fueling pump prior to being placed into the Fuel Tanks of the Buyer's Vehicles.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

“Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental entity having jurisdiction over such Person or its property or operations relating to the Agreement.

“Initial CNG Bus Purchase Order” means the initial purchase order by the Buyer to purchase a minimum of twenty-five (25) CNG Buses.

“Located at the Bus Depot and Maintenance Facility” means, in regard to any of the Buyer's Vehicles, those vehicles which are generally maintained and parked, from time to time, at the Bus Depot and Maintenance Facility and scheduled from said Bus Depot and Maintenance Facility. Nothing contained in this Agreement shall impose any restrictions on the Buyer as to which of the Buyer's Vehicles needs to be so located at the Bus Depot and Maintenance Facility, and the Buyer may, from time to time, reschedule and relocate its vehicles throughout its entire system which may or may not be, from time to time, at the Bus Depot and Maintenance Facility.

“Governmental Authorizations” means any authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the Agreement.

“Liquidated Damages Amount” has the meaning set forth in Section 8.3.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of the Agreement, determined in a commercially reasonable manner.

“Maintenance Facility Modifications Construction Agreement” or “Construction Agreement” means that certain Maintenance Facility Modifications Construction Agreement by and between Buyer and Nopetro, dated and effective as of even date herewith, as the same may be amended from time to time in accordance with the terms thereof.

“Maximum Tank Compression Specification” means, in connection with a CNG Bus, the manufacturer’s specifications for the Fuel Tank on that vehicle which sets forth the maximum pressure per square foot that the Fuel Tank can be filled with CNG under pressure.

“Milestone Date” means a task as set forth on the Milestone Schedule.

“Milestone Schedule” means the schedule set forth in Exhibit F.

“Minimum Annual Volume” means the minimum amount of Fuel to be purchased and received or paid for by Buyer in each Contract Year as set forth in Exhibit B-1. If elected by the Buyer, Fuel purchased by the designated Buyer Affiliate shall also be considered in the Minimum Annual Volume.

“Nopetro” means Nopetro-CH4 Holdings, LLC, a limited liability company organized under the laws of the State of Florida, and the parent of and the owner of all the outstanding membership and ownership interest in the Seller.

“Orange County” means Orange County, Florida.

“Party” or “Parties” has the meaning set forth in the first paragraph of the Agreement.

“Person” means a natural person, corporation, partnership, limited partnership, limited liability company, business trust, Governmental Authority, association or other legal entity.

“Premises” means the land upon which the Station is to be constructed, the precise boundaries of which are described in Exhibit A-1.

“Premises Acquisition Date” means on or before December 28, 2014.

“Project” means the CNG fueling station to be constructed, operated and maintained by Seller for the receipt, storage, processing, dispensing and sale of CNG, including the remodeling and renovations of Buyer’s Bus Depot and Maintenance Facility to be CNG compliant, all as more specifically contemplated in the Project Agreements.

“Project Agreements” means the Agreement, the Maintenance Facility Modifications Construction Agreement, and exhibits, schedules and attachments to each such agreement, as well as any other agreement between Buyer and Seller relating to the Premises or the Station, or to the purchase and sale of Fuel, that is specifically designated by the Parties as a “Project Agreement.”

“Prudent Practice” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the applicable industry), that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, cost effectiveness, and expedition, which are not limited to the optimal practices, means, methods and acts under the applicable circumstances.

“Public Access Fueling Lanes” means the fast-fill vehicle lanes located at the Station designated by the Seller to dispense Fuel to vehicles owned by the general public, including, without limitation, governmental entities (other than Buyer).

“Public Records Act” has the meaning set forth in Section 14.15.

“Regional Model Hourly Rate” means the rate charged by Buyer to its funding partners (which currently consist of the City of Orlando and the Counties of Orange, Seminole and Osceola) for one-hour of bus service, as adjusted from time to time.

“Replacement Fuel” means Fuel purchased from Seller at locations other than the Station.

“Replacement Fuel Period” has the meaning set forth in Section 3.4.

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for Fuel not made available by Seller to Buyer to fuel Buyer's Vehicles as a result of an Unexcused Failure by Seller under the Agreement.

“Representatives” has the meaning set forth in Section 14.16.

“Required Minimum Compression Fueling Standard” means the manufacturer's specifications for the Fuel Tank on that vehicle (but not exceeding the Maximum Tank Compression Specification) which sets forth the optimum pressure per square foot that the Fuel Tank can be compressed with CNG Fuel so as to be considered a maximum compressed Fuel Tank and, therefore, a “full” Fuel Tank.

“Right of First Refusal” has the meaning set forth in Section 3.1(w).

“Scheduled Construction Commencement Date” means ninety (90) days after the satisfaction of the last of the Conditions Precedent set forth in Section 2.2(a), or the waiver thereof by Seller, as such date shall be extended for Force Majeure events.

“Scheduled Departure Time” means the particular time for each of the Buyer's Vehicles (in the nature of a transit bus) when they are required to depart from the Bus Depot and Maintenance Facility in order for that particular Buyer's Vehicle to meet its scheduled times for its scheduled route.

“Scheduled Station Completion Date” means \_\_\_\_\_ (\_\_\_) calendar days after the Scheduled Construction Commencement Date, as such date shall be extended for Force Majeure

events. This is the stage in the progress when the work is sufficiently complete in accordance with the Project Agreements and the construction documents so that the Station can be operated for its intended use and the fueling of Buyer's Vehicles; all systems included have been successfully tested and are fully operational; all required governmental inspections and certifications required have been made, approved and posted; and designated initial instruction of Buyer's and Seller's personnel in the operation of systems has been completed.

“Seller” has the meaning set forth in the first paragraph of the Agreement, and includes its successors and permitted assigns.

“Seller Default” has the meaning set forth in Section 13.1.

“Seller Equipment” means the equipment, systems and items to be installed on the Premises for the receipt, processing, storage, handling, measuring, testing, safeguarding, controlling and dispensing of Fuel.

“Seller Governmental Authorizations” means Governmental Authorizations to be obtained by Seller for the design, development and construction of the Station and the improvements to be undertaken by Seller to the Bus Depot and Maintenance Facility.

“Station” means the CNG fueling station to be owned, constructed and operated by Seller at the Premises, the original construction of which is more fully described in Exhibit C to the Agreement.

“Station Hours” means:

(i) With respect to Buyer, twenty-four (24) hours per day, seven (7) days per week, and

(ii) With respect to third parties (i.e., not Buyer or Buyer's Affiliates), the hours that the Station will be open for sales of Fuel to such third parties, as determined by Seller in a commercially reasonable manner in accordance with Applicable Laws and Governmental Authorizations; provided that such hours for sale of Fuel to third parties (other than Buyer or Buyer's Affiliates) initially shall be from 5:00 a.m. to 5:00 p.m. on business days.

“Taxes” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth.

“Transferee” has the meaning set forth in Section 11.1.

“Undisputed Amount” means with respect to the amount to be paid by a Party pursuant to an invoice, statement, bill or other such request or demand for payment or credit by the other Party, the portion thereof which is not manifestly in error.

“Unexcused Failure” means non-performance or delay in performance by a Party of its obligations and covenants under the Agreement which is not caused by or does not result from a Force Majeure event affecting the Party, regardless of whether such non-performance or delay in

performance was cured after notice by the other Party or if uncured, would constitute or result in an Event of Default.

**Section 1.2. Interpretation.** The following rules of interpretation shall apply: (a) the words “herein,” “hereof” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) unless otherwise specified, references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement; (c) the Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall prevail; (d) the term “knowledge”, and any other similar expressions, shall mean actual knowledge of management of a Party; (e) the words “include,” “includes” and “including” are not limiting; (f) words singular and plural in number shall be deemed to include the other and pronouns having gender shall be deemed to include the other; and (g) in accordance with the principles of good faith and fair dealing in the performance of this Agreement and, unless expressly provided otherwise in this Agreement, (i) where the consent, approval, or similar action by a Party is required, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed and shall be deemed provided if notice of withholding or denial is not given within forty-five (45) days, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable. The recitals are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties’ respective rights or obligations or alter the plain meaning of this Agreement and the terms and conditions hereof; however, to the extent the terms and conditions of this Agreement are unclear or ambiguous or in conflict with terms and conditions of other Project Agreements, such terms or conditions should to the extent reasonably possible be reconciled and construed to be consistent with the objectives set forth in the recitals.

**Section 1.3. Exhibits.** The following documents are exhibits to this Agreement and incorporated herein.

<u>Exhibit A-1</u>	Description of the Premises
<u>Exhibit A-2</u>	Description of the Bus Depot and Maintenance Facility
<u>Exhibit B-1</u>	Fuel Price and Minimum Fuel Quantities
<u>Exhibit B-2</u>	Fuel Price and Minimum Fuel Quantities Defined Terms
<u>Exhibit C</u>	Description of Station
<u>Exhibit D</u>	Notices
<u>Exhibit E</u>	Insurance
<u>Exhibit F</u>	Milestone Schedule
<u>Exhibit G</u>	Performance Bond



**ARTICLE II**  
**SCOPE; TERM**

**Section 2.1. Scope; Term.**

(a) This Agreement sets forth the terms and conditions of the purchase by Buyer of its Fuel Requirements from Seller and the sale by Seller of such Fuel for the term of this Agreement. For the twenty (20) years from the Commercial Operations Date, Buyer shall be obligated to purchase all the Fuel for its Applicable Buyer's Vehicles from the Seller at the Station, provided, however, for each Contract Year during the first fifteen (15) years from the Commercial Operations Date, the amount of Fuel so purchased including any fuel purchased by Buyer's Affiliates shall not be less than the Minimum Annual Volume as set forth in this Agreement. After said fifteen (15) years, the Buyer shall have no obligation to purchase any Minimum Annual Volume of CNG from the Seller.

(b) Subject to the satisfaction or waiver by Seller of the Conditions Precedent with respect to Seller's obligation to sell and dispense Fuel at or from the Station, this Agreement is in force and effect as of the Effective Date and the term hereof ends on the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date unless it is terminated earlier in accordance with its terms.

**Section 2.2. Conditions Precedent.**

(a) The following is the condition precedent to the obligation of Seller to sell and dispense Fuel to Buyer at or from the Station:

(i) Seller obtains all Seller Governmental Authorizations necessary for the construction of the Station on terms and conditions acceptable to Seller and such Seller Governmental Authorizations are final and not subject to re-hearing or appeal; and

(ii) The Buyer has on or before December 28, 2014 submitted to Gillig LLC its Initial CNG Bus Purchase Order so as to satisfy the Buyer's Initial CNG Bus Acquisition Obligation; and

as of the date that conditions (i) and (ii) are satisfied or waived by Seller, all conditions precedent to Seller's obligations under the Maintenance Facility Modifications Construction Agreement have been satisfied by the Party responsible therefor, occurred or been waived by Seller and Buyer is not in breach or default under any Project Agreement. The Parties shall use commercially reasonable efforts to satisfy the Conditions Precedent that are their respective responsibility, coordinate their exchanges of information and documents relating thereto and promptly notify the other Party upon satisfaction of each Condition Precedent, but the language of this sentence shall not otherwise extend or modify the foregoing Conditions Precedent.

(b) The following are conditions precedent to the obligation of Buyer to purchase any Fuel from the Seller:

(i) Seller has acquired title to the Premises as provided in Section 2.3(a). This condition shall also be a simultaneous condition for the Buyer to submit its Initial CNG Bus Purchase Order as set forth in subsection (e) below.

(ii) Seller obtains on or before \_\_\_\_\_ all Seller Governmental Authorizations necessary for the construction of the Station on terms and conditions acceptable to Seller and such Seller Governmental Authorizations are final and not subject to re-hearing or appeal;

(iii) The Commercial Operations Date, on which the Station is fully operational, is on or before \_\_\_\_\_, and on said Date, the Seller is prepared to provide fuel to the Buyer's vehicles as provided in this Agreement.

(c) If the Conditions Precedent in (a) or (b) are not satisfied by the Party responsible therefor or waived by Seller in the case of (a) or Buyer in the case of (b) on or before the applicable Milestone Date, the applicable Party, if not in breach of its obligations with respect to the satisfaction of Conditions Precedent, shall have the right to terminate this Agreement by notice to the other Party within thirty (30) days after the applicable deadline.

(d) The Seller's obligation to close on the purchase of the Premises and the Buyer's obligation to submit its Initial CNG Bus Purchase Order are mutually dependent on each other so that the obligation of one party to perform the particular matter is contingent on the other condition being met. In that regard:

(i) The Seller will acquire title to the Premises and close on said purchase upon the following two conditions being met:

(1) The Seller and the Buyer have each executed this Agreement and the related Maintenance Facility Modification Agreement, and said Agreements and their execution have been approved by the Buyer's Board of Directors by no later than November 13, 2014.

(2) The Buyer's Board of Directors has approved the Initial Bus Purchase and directed the Buyer's staff to proceed to submit the Initial CNG Bus Purchase Order.

The Buyer will keep the Seller advised of its progress in satisfying the foregoing two conditions and, upon acquisition of title to the Premises, the Seller will so advise the Buyer and provide to the Buyer reasonable evidence and documentation to show that the Seller has closed on its purchase of the Premises.

(ii) Upon the Seller providing said evidence to the Buyer that the Seller has acquired the Premises, the Buyer will immediately submit its Initial CNG Bus Purchase Order and provide evidence of same to the Seller.

**Section 2.3. Station.**

(a) Seller shall acquire title to the Premises on or before the Premises Acquisition Date (and in any event as a condition precedent to the Buyer submitting its Initial CNG Bus Purchase Order (as set forth in Section 2.2(a)(ii) above) and will so advise the Buyer. Upon acquisition of the Premises, Seller will develop, finance, construct and operate the Station on the Premises in accordance with the terms and conditions of this Agreement, for the purpose of selling and dispensing Fuel at the Station to Buyer and third parties.

(b) At the option of the Buyer, the parties agree that Seller shall develop, finance, construct, operate and maintain other CNG fueling station(s) outside of Orange County as may be required to provide Fuel to Buyer's Vehicles if Buyer locates a portion of Buyer's Vehicles outside of Orange County and Buyer and Seller determine that one or more such additional CNG fueling station(s) is desirable to provide fuel to Buyer. In such case, the Seller and Buyer will negotiate the terms of said transaction under one of the following methods of payment:

(i) Buyer shall directly pay Seller all costs (materials, labor, profit, etc.) associated to design, build, operate and maintain the CNG fueling station; or

(ii) Buyer shall pay Seller all costs (materials, labor, profit, etc.) associated with the design, build, operation and maintenance of the CNG fueling station through a Compression Fee per DGE purchased; or

(iii) Any combination of (i) – (ii).

The Parties will then enter into an agreement comparable to this form of agreement, but with changes as agreed to by the Parties.

**ARTICLE III**  
**PURCHASE AND SALE OF FUEL**

**Section 3.1. Seller's Obligations.** Commencing on the Commercial Operations Date Seller shall:

(a) procure, receive and compress and store at the Station and sell to Buyer quantities of Fuel sufficient to dispense to Buyer's Vehicles, Affiliated Buyer's Vehicles, and third-party vehicles;

(b) in the event Station is inoperable/unavailable, Seller shall provide Fuel at the Station by alternative means until such time as the Station becomes operable/available. Should Seller not be able to so provide Fuel to Buyer, the same shall not be deemed to be a Seller Default; and

(i) The Minimum Annual Volume shall be reduced by the average daily volume of consumption for the period of time Fuel is unavailable;

(ii) Seller shall pay Buyer an amount for such deficiency equal to the product of (i) the positive difference, if any, obtained by subtracting the Fuel Price per DGE, from

the Replacement Price and (ii) the amount of Replacement Fuel purchased by Buyer; provided, that the invoice for such amount from Buyer to Seller shall include a written statement explaining in reasonable detail the calculation of such amount.

(c) install at the Buyer-Designated Fueling Lanes and, if requested by the Buyer, in the Public Access Fueling Lanes, various “reels” which consist of hoses on a reel to dispense the various Fluids and Lubricants. The Seller will further maintain those reels.

(d) make available Fuel (along with Fluids and Lubricants) to Buyer's Vehicles at the Buyer-Designated Fueling Lanes and the Public Access Fueling Lanes during the Station Hours applicable to Buyer.

(e) during the first three (3) years from the Commercial Operations Date, unless otherwise directed by the Buyer, provide employees to handle and provide for the dispensing of Fuel, Fluids and Lubricants to the Buyer's Vehicles.

(f) train employees of the Buyer regarding the dispensing of Fuel, Fluids and Lubricants to the Buyer's Vehicles, and other reasonably associated tasks concerning the fueling of the Buyer's Vehicles at the Station. In this regard, the Buyer, from time to time, will have the right to identify additional employees to be so trained, and the training will be such as is reasonably acceptable to the Buyer so that said employees are fully trained in being able to provide said services in connection with Buyer's vehicles. In that regard, Buyer employees will have access to the Station for the purpose of performing its duties and obligations in regard to Buyer's Vehicles; provided, however, that if any damage to the Station during the term of this Agreement results from the actions or failure to act of Buyer's employees or agents, Seller shall repair the same at Buyer's expense.

(g) procure, receive, compress and store quantities of Fuel to sell and dispense Fuel at the Station to third parties as Seller determines in its sole discretion;

(h) operate the Station during Station Hours for the sale of Fuel to Buyer and Buyer's Affiliates and, as Seller determines in its sole discretion, to third parties;

(i) operate, service, repair and maintain the Station and Seller Equipment in accordance with Prudent Practice and Applicable Laws in order to be able to perform its obligations hereunder;

(j) provide priority access to the Buyer through the establishment and maintenance of the Buyer-Designated Fueling Lanes at the Station during the Station Hours applicable to Buyer, provided that Buyer may also fuel Buyer's Vehicles at the Public Access Fueling Lanes during the Station Hours applicable Buyer;

(k) procure sufficient supplies of Fuel from domestic production in order to provide CNG Fuel for Buyer's Vehicles;

(l) dispense Fuel at the Station that meets minimum industry standards and the requirements of Applicable Laws for motor fuel;

(m) compress the CNG Fuel so that, at the pump, it meets the Fueling Pump Compression Standard;

(n) fill the Fuel Tanks of each Buyer's Vehicle to the Required Minimum Compression Fueling Standard;

(o) ensure that the Station is capable of fueling one hundred percent (100%) of the Available CNG Fleet by 2:00 a.m. daily.

(p) sell Fuel to Buyer at the price calculated in accordance with Exhibit B-1 and set the prices for Fuel sold to third-parties at the Station in DGEs, or other units of measurements at its discretion, subject to Applicable Law;

(q) install and maintain a point of sale system on the dispensers at the Station compatible with the Buyer's fuel management system to measure and record sales of Fuel in DGEs, or other measurements, identify taxable and tax-exempt transactions and charge the correct amount, including fuel taxes, as applicable, to each class of customer; provided that sales of Fuel to Buyer at the Buyer-Designated Fueling Lanes shall be metered in DGEs;

(r) invoice third party customers for and use commercially reasonable efforts to collect all amounts owed by third party customers for Fuel purchased at the Station which are not payable at the time of the sale;

(s) use commercially reasonable efforts to market and advertise the Station to potential third party purchasers of Fuel;

(t) meet with Buyer not less than one time each Contract Year to discuss efforts by the Seller to publicize the availability of Fuel at the Station for sale to third parties;

(u) issue an invoice to Buyer at the end of each week (Monday through Sunday) for Fuel purchased in such week, in accordance with Section 4.2;

(v) within thirty (30) days after the end of each Contract Year, issue an invoice to Buyer in respect of Buyer's failure, if any, to purchase and pay for the Minimum Annual Volume for such Contract Year, in an amount equal to the product of (i) the positive difference, if any, from subtracting the actual sum of (x) quantities of Fuel actually purchased and received by Buyer at the Station and (y) any quantities of Fuel for which Buyer has paid to Seller as part of its Minimum Annual Volume requirement for such Contract Year and (ii) the average Fuel Price per DGE during such Contract Year, which amount shall be paid by Buyer within thirty (30) days of receipt of Seller's invoice; and

(w) in the event that (i) the entire Premises are not required for the construction, operation and maintenance of the Station, and (ii) Seller receives an offer from a third party for purchase or lease by such third party of the portion of the Premises not being utilized by Seller, Buyer shall have the prior right to purchase or lease (the "Right of First Refusal") such portion of the Premises from Seller, at a purchase or lease price not less than and on terms not less favorable to Seller than set forth in the third-party offer received by Seller; provided that Buyer shall confirm to Seller Buyer's intention to exercise such Right-of-First Refusal within thirty

(30) days after receiving notification from Seller of the submission of a third-party offer to purchase or lease any portion of the Premises described in clause (ii).

**Section 3.2. Buyer's Obligations.** Commencing on the Commercial Operations Date, Buyer shall:

(a) for the twenty (20) years from the Commercial Operations Date, purchase all of its Fuel Requirements for Applicable Buyer's Vehicles from Seller and, in any event, for the first fifteen (15) years from the Commercial Operations Date, purchase from Seller, or otherwise pay for the Minimum Annual Volume in each Contract Year, except when Seller incurs an Unexcused Failure to sell and dispense Fuel to Buyer;

(b) pay Seller's invoices within thirty (30) days after receipt;

(c) throughout the term of this Agreement, use best efforts to include in its yearly capital plan and operating budget all monies reasonably necessary to perform and pay its obligations hereunder;

(d) assure that all Applicable Buyer's Vehicles comply with all Applicable Laws and are fitted with fuel tanks and receptacles compatible to receive and utilize Fuel;

(e) use Fuel solely and exclusively to fuel Buyer's Vehicles;

(f) fuel Applicable Buyer's Vehicles exclusively at the Station or at any other CNG fueling station owned or operated by Seller pursuant to Section 2.3(b);

(g) throughout the term of this Agreement, refrain from offering, contracting or agreeing to re-sell, trade, exchange or otherwise transfer Fuel to or procure, purchase or receive Fuel for fueling Applicable Buyer's Vehicles from any other Person within Orange County, except when the Seller is unable to timely meet its obligations under this Agreement;

(h) use Prudent Practice in the operation, maintenance, servicing and repair of all Applicable Buyer's Vehicles;

(i) comply with Seller's reasonable policies, procedures, rules and regulations regarding the Premises (and promptly notify Seller of any unreasonable policies), including those related to operation and parking of vehicles on the Premises, dispensing Fuel at the Station, safety and security; **provided, however,** that said rules and regulations do not adversely increase any cost to the Buyer;

(j) assure that persons operating Applicable Buyer's Vehicles are trained and possess all licenses, registration and other Governmental Authorizations required for the safe and lawful operation of such vehicles;

(k) throughout the term of this Agreement, meet with Seller not less than one time each Contract Year to discuss efforts by the Parties to publicize the availability of Fuel at the Station for sale to third parties;

(l) all transit buses purchased by the Buyer during the five (5) years from and after the Effective date in addition the CNG Buses purchased pursuant to the Buyer's Initial CNG Bus Acquisition Obligation, and which are to be stationed at the Bus Depot and Maintenance Facility, will be CNG Buses. Nothing contained herein will impose any obligation on the Buyer to purchase CNG Buses after said five (5) year period;

(m) be responsible for supplying Fluids and Lubricants at the Station and filling the respective containers at the Buyer-Designated Fueling Lanes, and unless Section 3.1(e) applies, to also provide for employees to be located at the Buyer-Designated Fueling Lane or Lanes to fuel the Buyer's Vehicles and otherwise provide the applicable Fluids and Lubricants.

**Section 3.3. Service Commencement.** Seller shall sell and dispense Fuel to Buyer at the Station beginning on the Commercial Operations Date and continuing through the term of this Agreement. If at any time it appears imminent that Seller will be unable to provide Fuel to Buyer at the Station, Seller shall immediately give notice to Buyer and the Parties will work together to make alternate arrangements to provide Fuel for Buyer's Vehicles pending Seller's ability to begin or resume full performance.

**Section 3.4. Replacement Fuel.** If Buyer is required to reduce the amount of Fuel purchased from Seller by fueling at locations other than the Station or if Seller fails to provide Fuel as required herein (the "Replacement Fuel Period"), then:

(a) Replacement Fuel purchased by Buyer from third parties for such Replacement Fuel Period shall be credited towards Buyer's Minimum Annual Volume, and

(b) Seller shall pay Buyer an amount for such deficiency equal to the product of (i) the positive difference, if any, obtained by subtracting the Fuel Price per DGE, from the Replacement Price and (ii) the amount of Replacement Fuel purchased by Buyer; provided, that the invoice for such amount from Buyer to Seller shall include a written statement explaining in reasonable detail the calculation of such amount; and

Subject to the above, nothing contained in this Section 3.4 shall be construed as relieving Buyer from its obligation to purchase the Minimum Annual Volume from the Seller.

**Section 3.5. Compliance with Laws.** Each Party shall at all times comply with all Applicable Laws, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its obligations, covenants or agreements hereunder. If a Party believes it likely that compliance with the terms of this Agreement would cause it to be in violation of any Applicable Law enacted, amended or changed after the Effective Date, it shall promptly notify the other Party and the Parties shall promptly meet and confer in an attempt to amend or modify the requirements hereof to avoid any non-compliance. A Party receiving notice or other communication from a Governmental Authority regarding any actual or potential violation of any such Applicable Laws shall provide prompt notice thereof to the other Party.

**ARTICLE IV**  
**PRICE; PAYMENT**

**Section 4.1. Price.** Seller agrees to sell and dispense, and Buyer agrees to purchase and pay for Buyer's Fuel Requirements at the Fuel Price per DGE, calculated in accordance with Exhibit B-1. The price for Fuel sold to third parties at the Station shall be measured in units and set by Seller at its sole discretion.

**Section 4.2. Weekly Invoice.** Within seven (7) days after the end of each week throughout the term of this Agreement, Seller shall send Buyer a detailed statement of the amount of Fuel sold to Buyer at the Station in such week (expressed in DGEs), along with a calculation of the Fuel Price per DGE attributable to such sales. Buyer shall remit payment of any amount invoiced by Seller within thirty (30) days after receipt of Seller's invoice without setoff, reduction, withholding or counterclaim unless Seller's invoice is manifestly in error, in which circumstance Buyer shall promptly inform Seller thereof and Seller shall re-issue the invoice. Notwithstanding the above, both parties may request and the other party shall provide a billing adjustment for any billing error discovered after payment.

**Section 4.3. Payment Terms.** Buyer shall remit payment of any amount invoiced by Seller hereunder within thirty (30) days after receipt of Buyer's invoice, subject to the right of Seller to withhold payment of amounts manifestly in error. If Buyer does not dispute the amount of any payment required hereunder and fails to make payment thereof when due to Seller, Buyer shall pay Seller interest on all late payments at the lesser of the Contract Rate or the highest amount permitted by law per month on the amount outstanding from the payment due date. In the event of any dispute about the amount of any invoice, representatives of the Parties shall meet and confer within thirty (30) days to attempt to resolve the dispute.

**Section 4.4. Quarterly and Annual Statements.**

(a) Seller shall have its books and records annually audited by a certified public accountant. On an annual basis, Seller shall provide to Buyer copies of audited financial reports that are comprised of the details of the amount of Fuel sold at the Station and Seller's calculation of Fuel Price per DGE charged to Buyer during the prior Contract Year if different than amounts invoiced, no later than thirty (30) days after receipt of such reports from its auditors. Seller shall keep and maintain accurate records of all Fuel sales at the Station and shall, subject to Section 5.1, make records relating to the cost of CNG procurement and transportation available to Buyer on request and under commercially-reasonable conditions.

(b) On an annual basis and within thirty (30) days after its receipt of audited financial reports, Seller shall provide to the Buyer a statement from the Seller's certified public accountants setting forth the information required under Section 4.4(a) with a statement by said accountants that they have audited the Seller's books and records and confirm to said report.

(c) On an annual basis and within thirty (30) days after its receipt of audited financial reports, Seller shall provide to the Buyer a statement from the Seller's certified public accountants setting forth the information required under Section 4.5 with a statement by said accountants that they have audited the Seller's books and records and confirm to said report.



**Section 4.5. Payments to Buyer for Third-Party Fuel Purchases.** Seller shall pay Buyer \$.085 for every third-party DGE of Fuel sold at the Station, irrespective of whether such third-party purchaser is another governmental entity or a private party. Seller shall pay Buyer such royalties, if any, monthly in arrears. Sales to Buyer's Affiliates shall not be deemed to be Sales to a Third Party. Along with said payment, the Seller shall provide to the Buyer a statement in form reasonably acceptable to the Buyer as to the amount of purchases of fuel sold to third parties and how the monthly payment has been arrived at and determined. The foregoing amount will also be increased or decreased annually on the anniversary date of the Commercial Operations Date based on any increase in the Consumer Price Index.

## **ARTICLE V** **FINANCIAL MATTERS**

**Section 5.1. Audit of Books and Records.** Upon reasonable prior written notice at any time during a Contract Year, or within sixty (60) months after the end of such Contract Year, during normal business hours at its cost and expense, Buyer shall have the right to inspect, reproduce and audit the books and records of Seller relating to Fuel Price per DGE. Said audit will be conducted at the Station, and the Seller shall keep and make available at the Station all applicable books and records relating to the operations at the Station. If as a result of such inspection and audit, it is established that the Fuel Price per DGE or other amount paid by Buyer was not properly calculated at any time during the Contract Year, (x) if such miscalculation resulted in an overcharge to Buyer, Seller shall upon written notice from Buyer refund to Buyer the amount of any such overcharge, plus interest accrued thereon calculated at the Contract Rate within thirty (30) days of such notice and (y) if such miscalculation resulted in an undercharge to Buyer, Buyer shall upon written notice from Seller, pay to Seller the amount of any such undercharge, within thirty (30) days of such notice. To the extent there is a difference of more than ten percent (10%) resulting as a result of said audit, the cost of said audit shall be paid by the Seller. The Parties acknowledge that such books and records and the information set forth therein are "Confidential Information" and shall be maintained confidential and not subject to disclosure to the maximum extent permissible under the laws of the State of Florida.

**Section 5.2. Cash Control Structure.** Seller shall maintain an internal control structure consistent with Prudent Practice to measure and record transactions and generate financial records for the purposes of preparing financial statements. The internal control structure shall be documented in written policies and procedures. Seller shall retain supporting documentation for all refunds and voided transactions for a period of sixty (60) months beyond the Contract Year.

## **ARTICLE VI** **STATION OPERATION AND MAINTENANCE**

**Section 6.1. Station Operation.** Seller shall operate the Station during Station Hours and dispense Fuel, Fluids and Lubricants to Buyer and third parties in accordance with this Agreement. Seller shall provide repair services and routine, preventative, and remedial maintenance for the operation of the Station. Seller shall have maintenance and repair personnel or contractors on call to perform emergency or unscheduled repairs and maintenance. In the

event of an emergency at the Station, Seller shall respond thereto within two (2) hours and restore the operation of the Station as soon as is commercially reasonable.

**Section 6.2. Premises Maintenance.** Seller shall maintain and keep the Premises in good order, repair, and condition at all times. Seller shall maintain and repair all fixtures and equipment on the Premises, except to the extent maintenance and repair is the obligation of the utility serving the Premises.

## **ARTICLE VII** **INDEMNIFICATION**

**Section 7.1. Indemnification.** Indemnifying Party agrees to indemnify and save harmless Indemnified Party from any liability whatsoever arising out of the negligent or other wrongful acts or admissions or omissions of Indemnifying Party or its employees, officers or agents in implementing this Agreement, including defense costs, attorney's fees, and all other fees incidental to the defense, loss, or damage Indemnified Party may suffer as a result of suits, claims, demands, costs, or judgments against Indemnified Party that arise out of Indemnifying Party's implementation of this Agreement. To the extent permitted by law, Indemnified Party agrees to indemnify and save harmless Indemnifying Party of any liability whatsoever arising out of the negligent or other wrongful acts or admissions or omissions of Indemnified Party's employees, officers or agents arising out of the implementation of this Agreement. Nothing in this Agreement shall be construed to affect in anyway Indemnified Party's rights, privileges and immunities under Florida law.

The Party which is required to indemnify (the "Indemnifying Party") the other (the "Indemnified Party") shall have the obligation to indemnify hereunder reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed or deemed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**Section 7.2. Defense.** Promptly after receipt of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article VII may apply, the Indemnified Party shall notify the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by it that is reasonably satisfactory to the Indemnified Party (provided, however, that the Indemnified Party shall have the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such matter involves both Parties and the Indemnified Party shall have been advised in writing by reputable counsel that there may be legal defenses available to it which are inconsistent with those available to the Indemnifying Party, then the Indemnified Party shall have the right to request the Indemnifying Party's insurance carrier to provide separate counsel to participate in the investigation and defense of such matter on its own behalf). In the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article VII, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of

any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**Section 7.3. Settlement.** If the Indemnifying Party fails to promptly assume and conduct the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, on the basis of written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

**Section 7.4. Subrogation.** Subject to Section 9.3, upon payment of any indemnification pursuant hereto, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnified Party may have relating thereto arising out of or relating to the indemnified loss or damage, and the Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party to pursue such claims.

## **ARTICLE VIII** **DAMAGE AND DESTRUCTION**

**Section 8.1. Notice of Damage and Destruction.** In the event of any damage to or destruction of all or any part of the Station, or damage to or destruction of any improvements to the Bus Depot and Maintenance Facility that might have an adverse effect on the operation of the Station, the Party discovering same will promptly give or cause to be given written notice thereof to the other Party generally describing the nature and extent of such damage or destruction. If the Station is damaged, Seller shall thereafter promptly provide information, documents and data reasonably requested by Buyer regarding the schedule and plan to remedy or repair such damage or destruction to the Station.

**Section 8.2. Seller to Repair Any Damage or Destruction.** In the event the Station or any portion thereof is damaged for any reason whatsoever and said damage would have an adverse effect on the ability of the Buyer to acquire fuel at the Station, the Seller will immediately undertake said repair at its cost and expense and shall meet with the Buyer to advise the Buyer as to the timing and nature of said repair. Any and all insurance proceeds shall be used to undertake said repair. Any such damage and destruction shall not relieve the Seller of its obligation to continue to provide fuel to the Buyer using alternative means at the Station.

**Section 8.3. Liquidated Damages.** Seller understands that if one hundred percent (100%) of the Available CNG Fleet is not fueled by 2:00 a.m. daily in accordance with Section 3.1(o), Buyer will suffer damages which are difficult to determine and accurately specify. Seller agrees that, if it fails to comply with the requirements set forth in Section 3.1(o), Seller shall promptly pay Buyer for each Buyer's Vehicle in the Available CNG Fleet which has not been fueled by 2:00 a.m., liquidated damages and not as a penalty an amount (i.e., the Liquidated Damage Amount) determined by multiplying the Regional Model Hourly Rate by the number of whole hours after 2:05 a.m. (on the date at which the failure to comply with Section 3.1(o) initially occurs) that it takes for each of said Buyer's Vehicles to be fully fueled.

When calculating the Liquidated Damage Amount, any partial hours shall be rounded up to the next whole hour. The Liquidated Damage Amount may be offset by the Buyer against any payments due the Seller.

## **ARTICLE IX** **INSURANCE**

**Section 9.1. Classes of Insurance; Requirements.** Seller covenants and agrees that it will maintain in full force and effect throughout the term of this Agreement insurance coverages as set forth in Exhibit E.

**Section 9.2. Certificates.** Seller shall deliver to Buyer, a copy of each insurance policy or a certificate from each insurer addressed to Buyer and dated within thirty (30) days prior to the delivery thereof and annually thereafter (a) listing the insurers and policy numbers of the insurance then required to be maintained by Seller hereunder, and (b) certifying that said insurance is in full force and effect. Seller's failure to effect, maintain or renew any insurance provided for in this Article IX or to pay the premiums therefor, or to deliver to Buyer any of the certificates, shall entitle Buyer, at its election, but without obligation, upon ten (10) days' prior written notice to Seller, to procure such insurance, pay the premiums therefor or obtain such certificates, and any sums expended by Buyer for such purposes, shall be repaid by Seller upon demand of Buyer.

**Section 9.3. Waiver of Subrogation.** Except as expressly provided in Section 7.4, each Party hereby waives and releases the other Party of and from any and all rights of recovery, claim, action or cause of action, against the other Party, its managers, officials, officers, agents and employees, for any loss or damage that may occur to the Station or property of Buyer, which is covered by insurance or would be covered by insurance required hereunder, regardless of cause or origin, including negligence of the other Party and their officers, agents and employees. The Parties acknowledge and agree that the waiver and release set forth in this Section 9.3 are not intended to benefit or result in the release, acquittal or discharge of any insurance carrier from its obligations and coverages in respect of any loss or damage which is covered by policies of insurance issued by such carrier or the release, acquittal or discharge of a Party of its obligations and liabilities hereunder if such loss is not covered by insurance and this Agreement required such Party to maintain insurance to cover such loss.

## **ARTICLE X** **REPRESENTATIONS AND WARRANTIES**

**Section 10.1. Representations of the Parties.** As of the Effective Date, each Party represents and warrants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the State of Florida and has all requisite power and authority to conduct its business, to own or lease its properties, and to execute, deliver, perform and pay its obligations under this Agreement and the other Project Agreements;

(b) The execution and delivery of this Agreement and performance and payment of its obligations hereunder have been duly authorized by all necessary limited liability company or

governmental action, as applicable, and do not and will not (i) require any consent or approval by any governing body of such Party, other than that which has been obtained and is in full force or is identified in the Maintenance Facility Modifications Construction Agreement as a consent or approval that will be obtained pursuant thereto and; (ii) violate any Applicable Law, or violate any provision in any organizational or governance documents of such Party, the violation of which could have a material adverse effect on the ability of such Party to perform and pay its obligations under this Agreement; (iii) result in a breach or constitute a default under its organizational or governance documents, or under any contract, indenture, bond, loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of it to pay or perform its obligations under this Agreement; (iv) or result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement or the other Project Agreements or is in favor of a Financing Party) upon or with respect to any of the assets or properties of it now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to pay or perform its obligations under this Agreement; and

(c) This Agreement and the other Project Agreements executed on the date hereof each constitutes the legal, valid and binding obligation of such Party enforceable against it in accordance with the terms hereof or thereof, as applicable, subject to equitable principles and general limitations on creditor's rights.

**Section 10.2. Buyer Representations.** Buyer represents and warrants throughout the term as follows:

(a) (i) all acts necessary to the valid execution, delivery and performance of this Agreement and the other Project Agreements have been taken and performed under its resolutions, bylaws, rules or regulations; (ii) all persons making up the governing body of Buyer are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with all Applicable Law; (iii) execution, delivery and performance of this Agreement and the other Project Agreements is for a proper public purpose and does not violate or contravene any governing documents or Applicable Laws; (iv) the term of this Agreement and the other Project Agreements does not extend beyond any applicable limitation imposed by any governing documents and Applicable Laws; and (v) funds to be used by Buyer to pay for Fuel hereunder shall be from any of Buyer's legally available funds.

(b) Buyer is not a party to any other agreement, contract, purchase order, procurement, arrangement or understanding relating to the purchase, procurement or receipt of CNG;

(c) Buyer is not planning, evaluating, studying or otherwise considering, the privatization, contracting or outsourcing of its transit business; and

(d) Buyer is not a party to a lawsuit or other proceeding, nor is the commencement of a lawsuit or other proceeding threatened, which is reasonable likely to materially adversely affect the ability of Buyer to perform and pay its obligations under this Agreement.

**Section 10.3. Seller's Representations.** Seller represents and warrants as follows:

(a) Subject to the Conditions Precedent, Seller has obtained and fully paid for, or will promptly obtain and fully pay for, all Governmental Authorizations necessary for Seller to provide the services as set forth in this Agreement, except those that cannot be obtained at this time or until construction of the Station has been completed, and Seller will obtain and fully pay for such additional Governmental Authorizations as soon as they are required and can be obtained.

(b) Except as otherwise disclosed by Seller to Buyer in writing and subject to the assumptions and limitations stated therein, any and all factual statements and representations in Seller's September 13, 2013, CNG P3 Proposal to LYNX are true and correct in all material respects, and there have been no material adverse changes to the financial condition or ability of Seller to perform its obligations hereunder as a result of changes in such statements and representations since that date. To the best of the knowledge of Seller, there has been no change to the financial condition or capability of Seller since such date which materially adversely affects the business or prospects or condition (financial or other) of Seller or its properties or assets, which has not been set forth herein or in a certificate or statement furnished by Seller to Buyer or disclosed to Buyer in writing.

(c) Seller is not a party to a lawsuit or other proceeding, nor is the commencement of a lawsuit or other proceeding threatened, which is reasonably likely to materially adversely affect the ability of Seller to perform and pay its obligations under this Agreement.

(d) The Seller has the Premises under contract through a valid Purchase Contract which provides for a closing on the purchase of the Premises on or before \_\_\_\_\_. Subject to the conditions set forth in the Contract, the Seller will acquire and take title to the Premises on or before said date.

(e) The Seller is a wholly owned subsidiary of Nopetro.

(f) Matters regarding financial statements and maintaining minimum net worth.

During the term of this Agreement, the foregoing representations shall be true and correct at all times.

**ARTICLE XI**  
**ASSIGNMENT**

**Section 11.1. Assignment.** This Agreement and/or the rights and interests of Buyer and Seller in this Agreement or any part thereof, may not be assigned, pledged or otherwise transferred by Buyer or Seller to a third party (such third party, a "Transferee"), in whole or in part, and whether by operation of law or otherwise, except as provided in this Section 11.1. The prior written consent of the other Party shall be required for any assignment by a Party of its rights or obligations hereunder; such consent shall not be unreasonably withheld. Each Party shall, in its good faith exercise of its right to withhold consent to assignment, pledge or transfer of this Agreement by the other Party consider the following factors: (i) whether the proposed Transferee is in good standing with such Party; (ii) the ability, knowledge and experience of the

Transferee related to the performance of the obligations of the assigning Party; and (iii) the financial resources of the Transferee to perform and pay the obligations of the assigning Party. Buyer shall have the right to withhold consent to any assignment, pledge or transfer of this Agreement by Seller where such Transferee or any of its then-current officers, directors and executive managers has been convicted of a crime involving moral turpitude; has engaged in the sponsorship of terrorism; or been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in the public contracting process by any Florida or federal administrative agency. Seller shall have the right to select and engage contractors and operators for the construction, equipment and performance of operation, maintenance and repair of the Station.

**Section 11.2. Effect of Assignment.** The assignment or transfer of this Agreement or of a Party's rights or interest under this Agreement shall not relieve the assigning Party of liability for its obligations under this Agreement unless such assignee assumes in writing the obligations of the assigning Party hereunder and the other Party consents thereto. The terms of any assignment or transfer of this Agreement or of a Party's interest under this Agreement shall be consistent with the terms of this Agreement. Any Person who shall become a transferee or assignee of this Agreement or the rights and obligations of the transferor or assignor shall be bound by and be liable upon all the terms, covenants, provisions and conditions contained in this Agreement during the remaining term of this Agreement.

## **ARTICLE XII**

### **MATTERS REGARDING CONSTRUCTION AND FINANCING OF STATION**

**Section 12.1. Acquisition of Premises.** The Seller represents that it has a binding contract to acquire title to the Premises and will do so on or before the Premises Acquisition Date. In that regard, the Seller will keep the Buyer advised with respect to said process and will notify the Buyer when the Seller has closed the transaction and acquired title to the Premises. The Seller will provide to the Buyer a copy of the recorded Deed of conveyance, the actual survey, a copy of the Title Commitment and Title Policy regarding said transaction.

(a) **Construction of Station.** The Seller will immediately after acquisition of title to the Premises, commence final engineering and construction permit applications and preparations required to begin construction of the Station and will keep the Buyer advised with respect to said construction. In that regard, set forth in Exhibit E attached hereto are the milestones regarding the construction of the Station. In regard to said milestones, the Seller will see that the stage of construction meets each milestone. The Buyer will have the right to inspect the status of construction during the term thereof. Upon completion of construction, the Seller will further provide to the Buyer a copy of the "as-built" survey and updated Title Policy.

**Section 12.2. Mortgage Financing of Premises Acquisition and Construction.** Seller may finance and refinance all or a portion of the cost to develop, construct, equip, operate, maintain, repair, expand, alter and replace the Station. Seller may not, without Buyer's written consent, assign and/or pledge this Agreement to any Financing Party in connection with such financing or refinancing which consent shall not be unreasonably withheld, conditioned or delayed. In regard to any mortgage financing with respect to the Premises or the Station:

(a) Any such financing may only secure funds necessary for the acquisition of the Premises and the construction of the Station. Said mortgage financing may not secure any other debt of the Seller or any other Affiliate.

(b) In regard to the mortgage financing, it will not exceed 90% of the appraised value of any appraisal that is furnished to the perspective lender. The Seller will provide to the Buyer a copy of any such appraisal.

(c) At the option of the Buyer, the prospective lender will enter into an agreement with the Buyer, reasonably acceptable to both parties, providing for, among other matters, that, as long as the Buyer is not otherwise in default under this Agreement, that the Station may continue to be run by the Seller (or an alternative reasonable acceptable to the Buyer) to provide Fuel to the Buyer.

(d) The Buyer will have a right of first refusal in the event of a default under the mortgage to either acquire title to the Station or to have another party acquire title to the Station for an amount equal to the unpaid principal balance, unpaid interest, and any fees or penalties due for prepayment of any such outstanding principal balance due and owing on the mortgage.

(e) Buyer shall, upon request by Seller, execute and deliver certificates, opinions and other documents reasonably requested by the Financing Party from time to time. The rights and obligations of the Parties and the Financing Party, including the right of a Financing Party upon the occurrence of a Seller Default or a default by Seller under the financing documents related to the Station, shall be as set forth in this Agreement and other agreements, instruments and documents executed by and among the Seller and the Financing Parties.

### **ARTICLE XIII** **DEFAULT**

**Section 13.1. Events of Default by Seller.** The occurrence of any of the following acts, events or conditions shall constitute a “Seller Default” by Seller under this Agreement:

(a) Seller’s Unexcused Failure to comply with Section 3.1(o) for a total of thirty (30) consecutive days;

(b) Seller fails, within thirty (30) days after receipt of notice of such failure from Buyer, to pay Buyer any sum due and owing, plus accrued interest thereon, as a result of Buyer’s permissible purchase of Fuel from a third party during the Replacement Fuel Period;

(c) Seller abandons or incurs an Unexcused Failure to operate the Station for ten (10) consecutive days and Seller fails to provide Fuel for Buyer's Vehicles during that time period;

(d) Seller fails at any time during the term hereof to perform any other material covenant, agreement or obligation of Seller hereunder and such failure or refusal shall continue without cure for a period of sixty (60) days from and after notice from Buyer; provided, however, that if such default is of a nature such that it is not reasonably susceptible of being cured within such sixty (60) day period, a Seller Default shall not be deemed to have occurred if



Seller commences to cure during such sixty (60) day period and diligently and continuously pursues such cure to completion;

(e) Seller fails at any time during the term hereof to cure any inaccuracy, incompleteness, breach or violation of any material representation or warranty made by Seller herein and such failure or refusal shall continue without cure for a period of sixty (60) days from and after notice from Buyer; provided, however, that if such default is of a nature such that it is not reasonably susceptible of being cured within such sixty (60) day period, a Seller Default shall not be deemed to have occurred if Seller commences to cure during such sixty (60) day period and diligently and continuously pursues such cure to completion;

(f) Seller fails to materially comply with Applicable Laws governing the operation of CNG fueling stations and fails to cure such failure within thirty (30) days after notice from Buyer or such longer period of time reasonable under the circumstances;

(g) Seller attempts to assign this Agreement in a manner inconsistent with the applicable terms hereof; or

(h) Seller is Bankrupt.

**Section 13.2. Event of Default by Buyer.** The occurrence of any of the following acts, events or conditions shall constitute a “Buyer Default” by Buyer under this Agreement:

(a) Buyer fails to pay any undisputed amount of any invoice or statement that is due and owing hereunder within sixty (60) days after receipt of such invoice or statement;

(b) Buyer initiates, conducts, causes, suffers or permits activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Station or the operation, maintenance, level of service, safety, security or function of the Station or other Seller Equipment or improvements relating thereto including, without limitation, activities that may adversely affect the access and egress to and from the Premises by third party vendors, contractors, invitees and customers of Seller or the cost to Seller to operate and maintain the Station, and thereafter fails within sixty (60) days after notice from Seller to commence and thereafter diligently pursue a cure of such circumstance;

(c) Buyer fails at any time during the term hereof to perform any other material covenant, agreement or obligation of Buyer hereunder and such failure or refusal shall continue without cure for a period of sixty (60) days from and after notice from Seller; provided, however, that if such default is of a nature such that it is not reasonably susceptible of being cured within such sixty (60) day period, a Buyer Default shall not be deemed to have occurred if Buyer commences to cure during such sixty (60) day period and diligently and continuously pursues such cure to completion;

(d) Buyer fails at any time during the term hereof to cure any inaccuracy, incompleteness, breach or violation of any material representation or warranty made by Buyer herein and such failure or refusal shall continue without cure for a period of sixty (60) days from and after notice from Seller; provided, however, that if such default is of a nature such that it is not reasonably susceptible of being cured within such sixty (60) day period, a Buyer Default

shall not be deemed to have occurred if Buyer commences to cure during such sixty (60) day period and diligently and continuously pursues such cure to completion;

(e) Buyer is Bankrupt;

(f) Buyer fails to purchase or procure the Minimum Annual Volume from Seller or use Fuel for purposes other than fueling Buyer's Vehicles;

(g) Buyer shall re-sell, exchange, trade, convey or otherwise transfer Fuel to any Person;

(h) Buyer shall enter into any procurement, contract, agreement, purchase order, transfer, transaction or other arrangement with a third party, except as expressly permitted herein, for the procurement, purchase, delivery or receipt of, or Fuel for the fueling of Buyer's Vehicles; or

(i) Buyer fails to comply with Applicable Laws in the operation, maintenance, servicing and repair of Buyer's Vehicles in a manner or to such an extent that may or could materially and adversely affect operation or the safety of the Station, and fails within forty-five (45) days after notice from Seller to commence and thereafter diligently pursue a cure.

**Section 13.3. Termination by Buyer; Damages.** Upon the occurrence of a Seller Default which remains uncured by Seller after the expiration of any cure period set forth in Section 13.1 and delivery of written notice of such Seller Default from Buyer to Seller, Buyer shall have the right, at its election, to suspend performance and payment of its obligations and terminate this Agreement upon thirty (30) days prior notice to Seller. Notwithstanding the immediately preceding sentence, if Seller shall have delivered to Buyer prior written notice of the name and address of any Financing Party, Buyer shall provide prompt notice of any Seller Default to such Financing Party or Parties, and Buyer shall accept a cure to a Seller Default performed by any Financing Party(ies), provided that the cure is accomplished within thirty (30) days after the applicable cure period set forth in this Agreement. Buyer shall have the right to recover from Seller all direct Losses plus Costs that Buyer has incurred less any Gains realized by Buyer, by reason of such Seller Default.

**Section 13.4. Termination by Seller; Damages.** Upon the occurrence of a Buyer Default which remains uncured by Buyer after the expiration of any cure period set forth in Section 13.2 and notice of such Buyer Default from Seller to Buyer, Seller shall have the right, at its election, to suspend performance and payment of its obligations and terminate this Agreement upon thirty (30) days prior notice to Buyer. Seller shall have the right to recover from Buyer all direct Losses plus Costs that Seller has incurred less any Gains realized by Seller by reason of such Buyer Default.

**Section 13.5. General.** Each Party shall to the extent commercially reasonable under the circumstances continue to perform its respective obligations hereunder in the event of a Dispute that is referred to mediation, litigation or other proceeding hereunder. Each right, power and remedy of a Party provided in this Agreement or in any other Project Agreement or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to each and every other right, power or remedy provided in this Agreement or in any other

Project Agreement or at law or in equity. The Party not in breach or default shall be entitled to seek, to the extent permitted by Applicable Law, specific performance, including, injunctive relief, in the event of the breach or attempted or threatened breach of any term, condition or covenant of this Agreement by the other Party or to a decree compelling performance thereof. If any action shall be brought to enforce or interpret any of the terms, conditions or covenants of this Agreement, the prevailing Party shall be entitled to recover from the other Party all attorneys' fees and costs reasonably incurred in enforcing the terms of this Agreement. The Parties acknowledge that they shall not claim and shall not be entitled to recover or receive a judgment or award of consequential, indirect, special or incidental damages as a result of any loss or damages arising out of or relating to this Agreement or any other Project Agreement; provided however, that to the extent this Agreement specifies an express remedy, such remedy shall not be deemed consequential, indirect, special or incidental damages under this Section 13.5.

#### **ARTICLE XIV** **MISCELLANEOUS**

**Section 14.1. Entire Agreement.** This Agreement and the other Project Agreements set forth the entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof and this Agreement has been executed contemporaneously with the execution of the other Project Agreements. No modification or amendment of this Agreement shall be binding upon the Parties, or either of them, unless executed in writing by an authorized representative of each Party. The Parties acknowledge and agree that the expiration, non-extension or early termination of this Agreement will not itself limit or prevent Seller from participating in any procurement or other process conducted by Buyer to procure Fuel.

**Section 14.2. Waiver.** Except as specifically provided herein, failure of a Party to insist upon the strict performance by the other Party of any term, condition or covenant or to exercise any right or remedy of this Agreement shall not be a waiver of such performance or relinquishment of such right or remedy. No waiver by a Party of any provision, term, condition, or covenant of this Agreement shall be deemed to have been made and be enforceable unless in writing and signed by an authorized representative of the Party to be bound thereby.

**Section 14.3. Severability.** If any term or provision of this Agreement or the application thereof shall be held to be invalid, illegal, unlawful or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remainder of this Agreement shall not be affected and there shall be substituted for such term or provision a like provision which equitably accomplishes the mutual intent of the Parties in entering into this Agreement.

**Section 14.4. Surviving Provisions.** Any terms and provisions of this Agreement pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Agreement, including provisions relating to governing law, venue, dispute resolution, indemnity, payment, remedies, taxes, amendment, waiver, notice, confidentiality or limitation of liability, shall survive the end of the term of this Agreement.

**Section 14.5. Notices.** All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given hereunder, other than communication in the normal

course of contract administration, shall be in writing and shall be (a) personally delivered, or (b) delivered by a nationally recognized overnight delivery service, addressed to each Party at the address set forth in Exhibit D, or at such other address as may from time to time be designated by notice. Any such notice shall be effective on the date of delivery unless such date is a non-business day or delivery is made after normal business hours, in which case such notice shall be effective on the next business day.

**Section 14.6. Successors; Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each Party.

**Section 14.7. Headings.** Captions and headings used in this Agreement are for convenience of reference only and do not constitute a part of or affect the interpretation of this Agreement.

**Section 14.8. Governing Law.** This Agreement and any dispute, claim or controversy arising hereunder or in relation hereto shall be governed by and interpreted in accordance with the laws of the State of Florida.

**Section 14.9. Force Majeure.** If either Party shall be prevented or delayed by an event of Force Majeure from performing any obligations under this Agreement (except payment or financial obligations), or from satisfying conditions precedent or exercising cure rights, then the time for such performance or satisfaction of the specific matter or condition or exercise of rights shall be deemed extended on a day-for-day basis for the period of the delay caused by such event. As used herein, "Force Majeure" shall mean events, conditions or circumstances not within the control of the affected Party, not caused by the affected Party's negligence and would not have been avoided or prevented by the exercise of reasonable prudence, diligence and care, and are deemed to include changes in law, judicial, administrative or regulatory judgment, order or decree, any strike, lockout, labor dispute, unavailability of labor or materials, act of God, extraordinary flood, hurricanes, tornado, sinkhole, governmental action, civil commotion, terrorism, insurrection, sabotage, releases or discharges of hazardous materials, fire or other casualty, any condition caused by the negligence or willful misconduct of the other Party or its agents, contractors or representatives; provided, however that the following occurrences are not Force Majeure events: (i) a strike, lockout or labor dispute between the affected Party and its employees, agents, contractors and subcontractors; (ii) changes in market conditions that affect the cost of Seller's or Buyer's supplies, equipment or vehicles, or that affect demand or price for any of Seller's products or Buyer's property, plant and equipment; or (iii) the non-availability or lack of funds or failure to pay money when due, unless resulting from a failure of the banking system. Where an act, event or circumstance which primarily affects a third party or third parties prevents or delays a Party's performance hereunder, such act, event or circumstance shall constitute a Force Majeure hereunder as to such Party only if it is of a kind or character that, if it had happened to a Party, would have constituted a Force Majeure under this Section 14.9. A Party affected by the Force Majeure shall promptly deliver a written notice to the other Party of the Force Majeure specifying the nature thereof, the date such incident occurred and a reasonable estimate of the period that such incident will delay the fulfillment of obligations or conditions or exercise of rights contained herein, and thereafter take such commercially reasonable measures as applicable under the circumstances to mitigate the effects of such event of Force Majeure. Failure to promptly notify the other Party of a Force Majeure or to take commercially reasonable

efforts to mitigate the Force Majeure will preclude extension of time for that period that could have been mitigated by the other Party if such notice had been given or if commercially reasonable efforts had been undertaken. If a Party is unable, despite commercially reasonable efforts to resume performance of its obligations hereunder due to the occurrence of an event of Force Majeure for two hundred forty (240) days, either Party may terminate this Agreement by notice to the other Party prior to resumption of full performance by the affected Party, and neither Party shall have any further liability or obligations as a result of such termination.

**Section 14.10. Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any rights, remedies or benefits in favor of, duty to, or standard of care with reference to, or any liability to, any Person not a party to this Agreement, except those parties expressly agreed upon by both Buyer and Seller.

**Section 14.11. Further Assurances.** Each Party agrees to take or refrain from such actions and execute and deliver certificates, instruments and other documents as are reasonably requested by the other Party or a Financing Party to accomplish the mutual intent of the Parties in entering into this Agreement. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.

**Section 14.12. Relationship of the Parties.** This Agreement and the other Project Agreements shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

**Section 14.13. Dispute Resolution; Venue.** In the event a dispute, claim or controversy between the Parties arises out of or relates to this Agreement (a "Dispute"), the following procedure shall be utilized to resolve the matter:

(a) Management level personnel of the Parties shall meet at a mutually acceptable time and place within five (5) days after delivery of notice of such Dispute and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to negotiate resolution of the Dispute. If the matter has not been resolved within ten (10) days from such notice, either Party may initiate mediation as provided hereinafter.

(b) Either Party may initiate a non-binding mediation proceeding by making demand by notice to the other Party; thereupon, the Parties shall engage in mediation before a mutually agreeable mediator at a mutually agreeable location in Orange County, in accordance with Section 44.1011 et seq., Florida Statutes. If the Parties have not agreed within five (5) days of the demand for mediation on the selection of the mediator, the Dispute will be referred to a court in Orange County with jurisdiction over the Parties for selection of a mediator. To the extent allowed by Applicable Laws, all negotiations, settlement agreements and/or other written documentation pursuant hereto shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

(c) If the Dispute has not been resolved by mediation within thirty (30) days of the notice demanding mediation, either Party may pursue its remedies hereunder, and may initiate litigation upon five (5) days written notice to the other Party. The exclusive venues for litigation arising out of or relating to this Agreement shall be the courts of the State of Florida and the United States located in Orange County.

(d) Prior to the commencement of litigation, each Party shall bear its own fees and expenses with respect to the Dispute resolution procedures and each shall pay fifty percent (50%) of the fees and expenses of any mediator. The existence of a Dispute shall not itself relieve the Parties from the performance and payment of their respective obligations hereunder.

**Section 14.14. Negotiated Transaction.** This Agreement was negotiated and prepared by both Parties with the participation of counsel and advisors. The Parties have agreed to the text of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

**Section 14.15. Public Records Notice.** Buyer is an agency of the State and is subject to Florida's Public Records Act, Chapter 119, Florida Statutes (the "**Public Records Act**"). The Parties acknowledge and agree that nothing in this Agreement (including in Section 14.16) shall diminish or restrict Buyer's ability to or necessity for complying with the Public Records Act. Additionally, it is possible that the Seller, as a result of the Agreement, may also be subject to the Public Records Act and, if so, the Seller will promptly respond in accordance with said statute to any and all third party requests for "public records," as that term is defined in the Public Records Act, unless such records are exempt or confidential from the access requirements under the Public Records Act. If the Seller receives a request for public records directly from a third party, it will promptly notify the Buyer. The Buyer's determination as to the necessity of responding to such request for public records shall be presumptively correct. Nothing in this Section 14.15 is intended to constitute a waiver of the Buyer's or Seller's ability to assert its rights with respect to any trade secret information under Section 812.081(1)(c), Florida Statutes.

**Section 14.16. Confidentiality.** Subject to Buyer's obligations under the Public Records Act, the Parties will safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 14.16. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any Person the Confidential Information of the other Party without the prior written consent of the Party disclosing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents, consultants, contractors, potential investors and lenders (collectively, "**Representatives**") who have a need for such Confidential Information; provided, that the receiving Party shall be responsible for any breach of this Section 14.16 by any of its Representatives. In the event that Buyer receives a request from a third party to disclose Confidential Information, Buyer shall, prior to the disclosure of the Confidential Information, promptly notify the Seller of such request. Seller may thereafter, at its sole cost and expense, seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If Seller asserts that a record constitutes Confidential Information and Buyer reasonably determines that such records could constitute Confidential Information, Buyer shall

not disclose such record until such time as it is legally compelled to do so by court order (providing that all appellate remedies have been exhausted) and/or Seller provides its written consent to the Buyer. Seller shall be solely responsible for all fines, fees, and reasonable costs incurred by the Buyer in complying with this Section, provided that Seller shall not be responsible for any such fines, fees, or costs incurred by Buyer by reason of its failure to adhere to a court order or failing to comply with the terms of this Agreement. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this confidentiality and non-disclosure commitment. Neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Section 14.16 or any other term or provision of this Agreement, regardless of whether a claim is based in contract, tort or otherwise. For purposes of this Agreement, and the Maintenance Facility Modifications Construction Agreement, the information contained in Exhibit B-2 of this Agreement, is deemed a trade secret as defined in Section 812.081(1)(c) of the Florida Statutes and shall be treated as Confidential Information under this Agreement and the Maintenance Facility Modifications Construction Agreement. Accordingly, the information contained in Exhibit B-2 of this Agreement is specifically exempt from the disclosure requirements of Chapter 119 of the Florida Statutes as set forth in Section 815.045 of the Florida Statutes and any disclosure or dissemination of this Agreement or the Maintenance Facility Modifications Construction Agreement shall exclude Exhibit B-2 of this Agreement. Nothing contained in this Section is intended to limit the definition of Confidential Information to the information contained in Exhibit B-2 of this Agreement.

**Section 14.17. Sovereign Immunity.** The parties are aware and understand that Buyer is a government agency entitled to sovereign immunity under the laws of the State of Florida. This concept, among other matters, limits the liability of Buyer in tort actions and also restricts the ability of Buyer to provide indemnification and/or insurance beyond the strict limits set forth in the statute on sovereign immunity. As such, notwithstanding any other provisions of this Agreement to the contrary notwithstanding, none of the provisions contained herein shall waive or modify in any way whatsoever the provisions of sovereign immunity as they apply to Buyer. Buyer does not in any way waive any of the provisions regarding sovereign immunity.

**Section 14.18. Express Representation.** The Parties acknowledge and agree that neither Party nor its representatives, agents or advisors have made any representations, warranties, guarantees or promises with respect to or in connection with this Agreement, except as expressly set forth herein by the Parties.

**Section 14.19. Counterparts.** This Agreement and any amendment hereto or other instrument executed in connection herewith may be executed in any number of counterparts, each of which shall be an original and all of which together will constitute one and the same instrument.

**Section 14.20. Cooperative Purchasing.** Buyer shall cooperate with the Seller in using the terms and conditions of this Agreement with any other local governments or public entities in the development and use of mutually cooperative contracts; provided however, that any such

contracts with other local governments or public entities shall not alter or amend the terms of this Agreement. Additionally, the terms of this Section 14.20 shall not be construed to authorize either Party to disclose any Confidential Information.

**Section 14.21. Twenty Year Term of the Agreement.** By way of background, the parties are aware that the providing of CNG as a fuel is a developing concept and that, over the term of this Agreement, the customary and business practices relating to the providing of CNG as a fuel could change. In the event any changes occur after the initial five (5) years of this Agreement which have a material adverse effect on the Buyer or Seller, the parties will meet to discuss appropriate modifications to this Agreement to reflect the change in the customary market practices.

**Section 14.22. Most Favored Nation.** If the Seller (or its Parent or any Affiliate) should enter into a comparable agreement with any governmental entity relating to the providing of CNG as a fuel at the Station, and the material provisions of any such agreement (e.g., pricing) are more favorable than those set forth in this Agreement, then the Seller will inform the Buyer, and the Buyer and the Seller will then negotiate appropriate modifications to this Agreement so that the Buyer would have provide to it such similar terms.

**[END OF TEXT; SIGNATURES ON FOLLOWING PAGE(S)]**



**IN WITNESS WHEREOF**, Buyer and Seller have executed this Agreement and have affixed their seals hereunto and have delivered same as of the day and year first above written.

**CENTRAL FLORIDA REGIONAL  
TRANSPORTATION AUTHORITY  
(d/b/a LYNX):**

By: \_\_\_\_\_  
John M. Lewis, CEO

Date Executed by Buyer:  
November \_\_\_\_, 2014

**NOPETRO-ORLANDO, LLC:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date Executed by Seller:  
November \_\_\_\_, 2014

**GUARANTY OF  
CNG VEHICLE FUEL PURCHASE AGREEMENT (the "Agreement")**

**AGREEMENT DATE:** November \_\_\_\_, 2014

**SELLER:** Nopetro-Orlando, LLC

**BUYER:** Central Florida Regional Transportation Authority  
(d/b/a LYNX)

**NAME AND ADDRESS  
OF GUARANTOR:** Nopetro-CH4 Holdings, LLC,  
a Florida limited liability company  
2625 Ponce de Leon  
Coral Gables, FL 33134

**FOR VALUE RECEIVED**, and in consideration of and as an inducement for the execution and delivery of the Agreement referred to above between Buyer and Seller, the undersigned Guarantor hereby guarantees to Buyer (as well as each and every successor and assign), the full and prompt performance of all duties and obligations of the Seller under the Agreement, and the full and timely performance and observance of all the covenants, terms, conditions and agreements in the Agreements to be performed and observed by the Seller. Guarantor hereby covenants and agrees that if a Seller Default (as such term is defined in the Agreement) has occurred and be continuing, the Guarantor will upon written notice from Buyer promptly pay such sums and charges to the Buyer, and perform and fulfill all of such terms, covenants, conditions and agreements, that may arise in consequence of any default by the Seller under the Agreement of by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against the Guarantor, without the necessity of any suit or proceedings on the Buyer's part of any kind or nature whatsoever against the Seller and without the necessity of any notice of non-payment, non-performance, non-observance, acceptance of this Guaranty, or any other notice or demand, to which the Guarantor hereby expressly waives. The Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no way be terminated, affected, diminished or impaired (i) by reason of the assertion or failure of assert by the Buyer against the Seller of any of the rights and remedies available to the Buyer, or (ii) by relief of Seller from any of the Seller's obligations under this Agreement by the rejection of the Agreement in connection with proceedings under any bankruptcy or similar laws now or hereafter in effect or otherwise.

This Guaranty shall be a continuing guaranty and the liability of the Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Agreement or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Agreement, or by reason of any extensions of time that may be granted by the Buyer to the Seller or by reason of a change for different use of the Premises or by reason of any dealings or transactions or matters or things occurring between Seller and the Buyer, whether or not the Guarantor has knowledge or notice thereof.

The assignment by Buyer of the Agreement made either with or without the Guarantor's knowledge or notice shall in no manner whatsoever release the Guarantor from any liability as Guarantor. This Guaranty may be assigned by Buyer.

This Guaranty may not be canceled, terminated or in other way affected by the Guarantor except with the prior written consent of Buyer.

Prior to proceeding against the Guarantor or otherwise declaring the Seller in default under the Agreement, the Guarantor will be provided with the same notice as is given the Seller under the Agreement. This notice is solely for the benefit of the Guarantor and does not provide to the Buyer any additional option or cure period.

In the event it becomes necessary for Buyer to bring suit under this Guaranty, Buyer may bring suit in the county where Seller or the Premises are located and the Guarantor does hereby consent to said venue. Further, in the event Buyer brings any such action and Buyer is the prevailing party in this action, Buyer will be entitled to recover from the Guarantor in addition to any other costs and attorneys fees which it may be entitled to under the Agreement (and which costs and attorneys fees are deemed to be guaranteed by the Guarantor hereunder), all costs and expenses, including attorneys fees, incurred by Buyer in enforcing this Guaranty. As used herein, all costs and expenses, including attorney's fees, shall include all reasonable costs and expenses, including attorneys fees, in the appellate proceeding. Guarantor agrees to be further subject to all terms set forth in the Agreement including, for example, the express agreement to waive any jury trial in any action involving the Guarantor.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the undersigned has executed this Guaranty of CNG Vehicle Fuel Purchase Agreement as of the day and year set forth above.

**GUARANTOR:**  
**NOPETRO-CH4 HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A-1**

**Description of the Premises**

**[ANDY SALCINES TO PROVIDE]**

**EXHIBIT A-1**

**Description of the Premises – Continued**

**[ANDY SALCINES TO PROVIDE]**

**EXHIBIT A-2**

**Description of the Bus Depot and Maintenance Facility**

**[ANDY SALCINES TO PROVIDE]**

**EXHIBIT A-2**

**Description of the Bus Depot and Maintenance Facility – Continued**

**[ANDY SALCINES TO PROVIDE]**



**EXHIBIT B-1**

**Fuel Price and Minimum Fuel Quantities**

**Section A. Fuel Quantities**

1. During the Contract Years 1 through 15 (the “Base Period”), Buyer shall procure its Fuel Requirements from Seller and purchase or pay for the following minimum quantities of Fuel (the “Minimum Annual Volume”):

<u>YEAR</u>	<u>MINIMUM ANNUAL VOLUME in (DGE's)</u>
1	500,000
2	500,000
3	500,000
4	500,000
5	500,000
6	500,000
7	500,000
8	500,000
9	500,000
10	500,000
11	500,000
12	500,000
13	500,000
14	500,000
15	500,000

During Contract Years 16-20 Buyer shall procure its Fuel Requirements from Seller but shall have no obligation to purchase or pay for any minimum quantities of Fuel.

## **Section B.1 Fuel Price per DGE**

The unit price to be paid by Buyer to Seller for Fuel shall be stated in terms of price per DGE for the applicable number of DGE units. The Fuel Price per DGE shall be computed as the sum of:

1. Commodity Cost Per DGE;
2. Excise Tax per DGE;
3. Compression Fee per DGE;
4. Adder for Facility Modification Construction Fee;<sup>1</sup>
5. Adder for Employee Staffing for Fueling and Fluids<sup>2</sup>

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<sup>1</sup> This Adder represents an additional fee to be paid for a limited time for the construction costs associated with the construction of certain modifications to the Buyer's Bus Depot and Maintenance Facility under the Maintenance Facility Modifications Construction Agreement. The annual dollar amount to be paid to Seller for the cost of improvements to the Bus Depot and Maintenance Facility will be calculated using the mathematical formula commonly used to calculate monthly home mortgage payments, with the following inputs to this mathematical formula:

Annual interest rate – 6.25%  
Principal borrowed - \$2,579,878.00  
Total number of monthly payments – 120  
Payment due date – every month in arrears  
Payments structure – level payment amount every month  
Ending principal amount – zero

Annual payment will be paid in twelve equal monthly payments as an adder to the DGE price of Fuel, based on the assumption that 41,666.67 DGE's of Fuel are sold in each month.

Any unpaid balance may be prepaid, in whole or in part, at any time, at the option of the Buyer, at a prepayment price equal to the amount being prepaid plus any prepayment charges imposed by Seller's bank lender.

This Adder Fee will also include any year-end adjustment amounts as set forth in the Construction Agreement. The Adder Fee will no longer be paid once the construction costs and financing costs for such construction are paid in full as set forth in the Construction Agreement.

<sup>2</sup> This Adder is for staffing provided by the Seller for fueling and providing of fluids and liquids to Buyer's Vehicles. It will only be paid during the period of time that the Seller's employees are so involved. For full staffing by the Seller, the fee is [\$0.10 (10 cents) per actual DGE to be paid on a monthly basis.] [TO BE DISCUSSED]. This will be subject to the same annual inflation adjustment as the Compression Fee and Royalty. The foregoing fee will be adjusted pro rata to the extent the Seller's employees are reduced on a pro rata basis.

## EXHIBIT B-2

### Fuel Price and Minimum Fuel Quantities Defined Terms

THE INFORMATION CONTAINED IN THIS EXHIBIT B-2 IS A TRADE SECRET AS DEFINED IN 812.081(1)(C) OF THE FLORIDA STATUTES AND SHALL BE TREATED AS CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT AND THE MAINTENANCE FACILITY MODIFICATIONS CONSTRUCTION AGREEMENT. ACCORDINGLY, THE INFORMATION CONTAINED IN EXHIBIT B-2 OF THIS AGREEMENT IS SPECIFICALLY EXEMPT FROM THE DISCLOSURE REQUIREMENTS OF CHAPTER 119 OF THE FLORIDA STATUTES AS SET FORTH IN SECTION 815.045 OF THE FLORIDA STATUTES

“Base Period” means the period from the Commencement Operations Date through the fifteenth (15) anniversary thereof during which Buyer shall purchase or pay for the Minimum Annual Volume set forth in Section A.1 of Exhibit B-1.

“BTU” means British Thermal Unit.

“Commodity Cost per DGE” means (NYMEX + basis) + all transportation costs (including, without limitation, actual pipeline and Station fuel leakage) + natural gas acquisition and administrative costs/7.19.

“Compression Fee per DGE” means Seller’s fee for the compression of the Fuel, expressed per DGE, which shall be charged as follows:

<u>Diesel Gallon Equivalent (DGE) Per Month</u>	<u>Compression Fee per DGE</u>
0 - 25,000	\$1.15
25,001 - 85,000	\$1.10
85,001 - 145,000	\$0.95
More than 145,000	\$0.85

The Compression Fee per DGE charges as set forth above shall be increased annually in amount equal to the CPI, with the first CPI adjustment occurring on the first anniversary of the initial fueling date measured from the month of initial fueling to the month of such annual Compression Fee adjustment.

“CPI” means Consumer Price Index for All Urban Consumers (CPI-U), as published by the United States Bureau of Labor Statistics on a monthly basis, and changes to CPI shall be based on the difference from the first day of a Contract Year to the first day of the next Contract Year.

“DGE” means diesel gallon equivalent, a unit of volume defined as one (1) DGE equals 139,000 BTUs.

“Excise Tax per DGE” means Seller’s actual excise tax liability (including any and all applicable federal, state or local taxes levied upon CNG sales) stated on a per DGE basis.

Seller shall guarantee Buyer receives same or lower Fuel price as compared to other customers at the Station.

**EXHIBIT C**

**Description of Station**

**[ANDY SALCINES TO PROVIDE]**

## **EXHIBIT D**

### **Notices**

All notices under this Agreement shall be sent to the other Party at the address set forth below. A Party may change its addressee/address for notices by notice to the other Party in accordance with Section 13.5.

#### **To Buyer:**

**CENTRAL FLORIDA REGIONAL TRANSPORTATION  
AUTHORITY, d/b/a LYNX**

455 N. Garland Avenue  
Orlando, Florida 32801  
Attn: Chief Executive Officer

#### **To Seller:**

**NOPETRO-ORLANDO, LLC**

2625 Ponce de Leon Boulevard  
Coral Gables, Florida 33134  
Attn: President and Chief Operating Officer

## **EXHIBIT E**

### **Insurance**

A. Seller shall obtain and pay for (or self-insure) and maintain throughout the term of the Agreement the insurance coverages listed below. All insurance coverages and policies (except worker's compensation and employer's liability) shall name Buyer as an additional insured/loss payee as its interests shall appear, waive rights of subrogation against Buyer, and require notice to Buyer of changes in coverage or termination. If any of the coverages are not generally available at commercially reasonable prices, premiums, terms and conditions, the Parties shall confer in good faith to address such circumstance.

1. Worker's compensation insurance and disability benefits liability insurance required by Florida law covering all of the employees of the Seller at the Station.

2. Employer's liability insurance required by Florida law covering all of the employees of the Seller at the Station.

3. Commercial general liability and property damage insurance with contractual liability and products completed operations coverage with combined single limit for bodily injury, and for property damage with limits of not less than one million dollars (\$1,000,000.00).

4. Commercial automobile liability insurance endorsed for any auto with limits of one million dollars (\$1,000,000.00) combined single limit

5. Personal and Advertising Injury with limits of not less than one million dollars (\$1,000,000.00).

6. Excess liability insurance above the required comprehensive general, automobile, and employer's liability insurance in the amount of ten million dollars (\$10,000,000.00).

7. All risk physical damage insurance covering loss, damage, or destruction to the Station (including machinery coverage and builder's risk insurance, where applicable) in an amount equal to the full replacement value of the Station, with coverage adjusted each year to reflect the then-current replacement value. Such insurance shall include coverage for cost of demolition and changes in building codes.

**EXHIBIT F**

**Milestone Schedule – [Need to insert Start and Finish Dates]**

<b>Task</b>	<b>Duration</b>	<b>Start</b>	<b>Finish</b>
Order CNG Equipment	1.0		
Site Survey for Design	2.5		
Conceptual Design Dev.	21.0		
Construction Drawings (Station)	54.0		
Construction Permit Submission (CNG Station)	45.0		
Pre-Construction Site Meeting	1.0		
Construction Price Bidding	40.0		
Contractor Contract Neg.	31.0		
Update Construction Schedule	1.0		
Equipment Submittals	8.0		
Order Canopy Structure	1.0		
Order Stand-by Generator	1.0		
Site Survey (Construction Boundaries)	2.0		
Mobilization	2.0		
Site-work	12.0		
Underground Utilities	10.0		
Nat-Gas Service Installation	10.0		
Excavate & Pour Canopy Foundation	2.5		
Final Base and Grading	14.0		
Asphalt Paving	5.0		
Excavate & Pour Containment Wall Foundation	2.0		
Excavate & Pour Restroom Foundation	3.5		
Installation of Wall Masonry	11.0		
Pour Concrete Equipment Pads	3.0		
Cement Stucco	8.0		
Underground Conduit & Gas Piping	21.0		
Gravel Base in Equip. Area	2.0		
Fence & Gates	8.0		

<b>Task</b>	<b>Duration</b>	<b>Start</b>	<b>Finish</b>
Elastomeric Paint	3.0		
CNG Equipment Installation	3.0		
Canopy Concrete Pad	7.0		
CNG Dispenser Equip. Install	3.0		
Testing & Start-Up	14.0		
Canopy Erection	9.0		
Canopy Finishes	3.0		
Lighting & Testing	3.0		
Lighting Protection	7.0		
Generator Slab	2.5		
Generator Installation	3.0		
Generator Interconnection	5.0		
CNG Equip. Elec. Interconnect	25.0		
Power Site Lighting	8.0		
Final Site Clean-up	2.0		
Equipment Commissioning	15.0		
Substantial Completion/T.C.O.	3.0		
As-built Drawings	5.0		
Punch List	5.0		
Final Inspection/C.O.	10.0		
Project Closeout	10.0		



**PUBLIC PERFORMANCE BOND**

**Bond No.** \_\_\_\_\_

BY THIS BOND, We Nopetro Orlando, LLC, 2625 Ponce de Leon Blvd., Coral Gables, Florida 33134 as Principal and Lexon Insurance Company, 12890 Lebanon Rd., Mt. Juliet, TN 37122 a corporation, as Surety, are bound to Central Florida Regional Transportation Authority d/b/a LYNX, 455 N. Garland Avenue, Orlando, Florida 32801, herein called Obligee, in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

**THE CONDITION OF THIS BOND is that if Principal:**

1. Fully and completely performs each and all of the terms, provisions and requirements with respect to the sale of CNG Fuel to Obligee under the CNG Vehicle Fuel Purchase Agreement dated November \_\_\_\_, 2014 (the "Contract"), between Principal and Obligee, the Contract being incorporated herein by this reference, at the time and in the manner prescribed in the Contract; and

2. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

In the event of non-performance of the Contract by Principal this Performance and Payment Bond can be presented for honor and acceptance at Lexon Insurance Co., 12890 Rd., Mt. Juliet, TN 37122 and a copy sent to Nopetro Orlando, LLC at 2625 Ponce de Leon Blvd., Coral Gables, Florida 33134,

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED on this the \_\_\_\_ day of November, 2014.

**Nopetro Orlando, LLC**  
(Principal)

By: \_\_\_\_\_

**Lexon Insurance Company**  
(Surety)

By: \_\_\_\_\_  
Rachel Parikh, Attorney-in-Fact

# DRAFT AIA<sup>®</sup> Document A102<sup>™</sup> - 2007

**Standard Form of Agreement Between Owner and Contractor**  
*where the basis of payment is the Cost of the Work Plus a  
Fee with a Guaranteed Maximum Price*

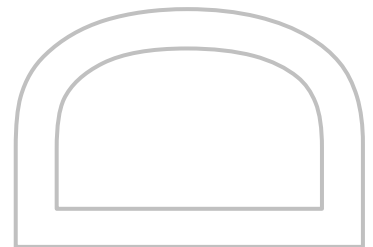
## ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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# DRAFT AIA® Document A102™ - 2007

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of November in the year 2014  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Central Florida Regional Transportation Authority, d/b/a LYNX  
455 North Garland Avenue

Orlando, Florida 32801 and the Contractor:  
(Name, legal status, address and other information)

Nopetro-CH4 Holdings, LLC, a Florida limited liability company  
2625 Ponce de Leon Boulevard, Coral Gables, Florida 33134 for the following Project:  
(Name, location and detailed description)

LYNX Bus Depot and Maintenance Facility  
[Building A  
2500 LYNX Lane  
Orlando, FL 32804][Confirm address]

Modification of bus depot and maintenance facility to ensure that the facility complies with applicable standards and codes for a CNG servicing and maintenance facility. The Engineer:  
(Name, legal status, address and other information)

«TBD »« »  
« »  
« »  
« »

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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29759769;2 (PTC; 10-27-14)

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) as herein modified by the parties, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Unless specifically enumerated in this Agreement, the Contract Documents do not include the Contractor's unsolicited proposal. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The date of commencement shall be upon receipt by Contractor of a notice to proceed issued by Owner, which is on or about April 23, 2015, as set forth in the attached Project Schedule.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than on or about September 1, 2015, as set forth in the attached Project Schedule.

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

<< >>

Portion of Work

Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 4.4 The attached Project Schedule has certain dates or milestones for work during the Project, and the Contractor shall achieve those interim milestone dates for the work so noted.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)*

<< >>

**ARTICLE 5 CONTRACT SUM**

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

The Contractor's Fee is \$ \_\_\_\_\_.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

The Contractor's Fee is fixed and shall not change.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

<< >>

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed « » percent ( « » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)

## § 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed two million five hundred and seventy-nine thousand eight hundred and seventy-eight dollars (\$2,579,878.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

*(Insert specific provisions if the Contractor is to participate in any savings.)*

« »

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

« »

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

None. The Guaranteed Maximum Price is fixed.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

There will be no change in the Guaranteed Maximum Price under this subsection.

## ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

There will be no change in the Guaranteed Maximum Price under this Article 6.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COSTS TO BE REIMBURSED

### § 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

### § 7.2 LABOR COSTS

Unless otherwise agreed in writing by the Owner, any labor costs of the Contractor will not be separately included in cost to be reimbursed but, rather, are included in the Contractor's Fee.

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

### § 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the



completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

With respect to the costs under this Section 7.5, those will relate to costs incurred by the Prime Subcontractor (i.e., \_\_\_\_\_) and not the Contractor.

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.



§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### § 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

#### ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Engineer. The Owner shall then determine, with the advice of the Contractor and the Engineer, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

## ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 12 PAYMENTS

### § 12.1 PAYMENT THROUGH ADDITIONAL FUEL CHARGE

§ 12.1.1 Reference is hereby made to that certain CNG Vehicle Fuel Purchase Agreement dated on or about the date hereof (the "Fuel Agreement") by and between Owner and Nopetro-Orlando, LLC, a wholly-owned subsidiary of Contractor ("Nopetro-Orlando"). All payments due on account of the Contract Sum shall be paid by Owner to Nopetro-Orlando as follows: To each diesel gallon equivalent (DGE) (a unit of volume where each DGE is equal to 139,000 BTUs) of compressed natural gas sold by Nopetro-Orlando to Owner, there shall be added \$0.40 (the "Additional Fuel Charge") until such time as the Contract Sum is fully paid. See attached Addendum setting forth the process for calculating and making said payments. For the avoidance of doubt, Owner shall not be required to make any payments for the work except by way of the imposition of the Additional Fuel Charge. The Contractor shall deliver an Application for Payment to Engineer in respect of any work to be charged against the Contract Sum. No payments shall be due until completion of the work in accordance with Section 12.2 (subject to any exceptions contained therein)

§ 12.1.2 N/A

<< >>

§ 12.1.3 N/A

§ 12.1.4 With the Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) that portion of those payments attributable to the Contractor's Fee; plus (2) payrolls for the period covered by the Application for Payment.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Application for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Engineer has made exhaustive or continuous on-site inspections; or that the Engineer has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 IMPOSITION OF ADDITIONAL FUEL CHARGE

§ 12.2.1 The Additional Fuel Charge shall be imposed when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Engineer.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Engineer by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Engineer will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Engineer is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Additional Fuel Charge will be assessed for the amount certified in the Engineer's final Certificate for Payment.

§ 12.2.4 N/A

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§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, such costs and the Contractor's Fee applicable thereto shall be added to the total amount owed by Owner (to be paid pursuant to the Additional Fuel Charge), but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner.

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1 INITIAL DECISION MAKER

The Engineer will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Engineer.)*

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### § 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other (*Specify*): Mediation. If elected by either party, any dispute shall be subject to non-binding mediation before litigation.

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## ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 N/A

§ 15.3 The Owner’s representative:  
*(Name, address and other information)*

[REDACTED]  
Central Florida Regional Transportation Authority  
455 North Garland Avenue  
Orlando, Florida 32801  
(407) 254-[REDACTED]  
< >  
< >  
< >  
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§ 15.4 The Contractor’s representative:  
*(Name, address and other information)*

Andre J. Salcines  
V.P. of Construction  
Nopetro-CH4 Holdings, LLC  
2625 Ponce de Leon Blvd.  
Coral Gables, Florida. 33134  
305.441.9059 office

§ 15.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ written notice to the other party.

§ 15.6 Other provisions:

**1. Public Records Notice.** Owner is an agency of the State and is subject to Florida’s Public Records Act, Chapter 119, Florida Statutes (the “Public Records Act”). The parties acknowledge and agree that nothing in this Agreement (including in Section 15.6.2) shall diminish or restrict Owner’s ability to or necessity for complying with the Public Records Act. Additionally, it is possible that the Contractor, as a result of the Agreement, may also be subject to the Public Records Act and, if so, the Contractor will promptly respond in accordance with said statute to any and all third party requests for “public records,” as that term is defined in the Public Records Act, unless such records are exempt or confidential from the access requirements under the Public Records Act. If the Contractor receives a request for public records directly from a third party, it will promptly notify the Owner. The Owner’s determination as to the necessity of responding to such request for public records shall be presumptively correct. Nothing in this Section 14.15 is intended to constitute a waiver of the Owner’s ability to assert its rights with respect to any trade secret information under Section 812.081(1)(c), Florida Statutes.

**2. Confidentiality.**  
Subject to Owner’s obligations under the Public Records Act, the parties will safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 15.6.2. Specifically, no receiving party shall itself, or permit its employees, consultants and/or agents



to disclose to any person the Confidential Information of the other party without the prior written consent of the party disclosing the Confidential Information, except a receiving party may distribute the Confidential Information to its board members, officers, employees, agents, consultants, contractors, potential investors and lenders (collectively, "**Representatives**") who have a need for such Confidential Information; provided, that the receiving party shall be responsible for any breach of this Section 15.6.2 by any of its Representatives. In the event that Owner receives a request from a third party to disclose Confidential Information, Owner shall, prior to the disclosure of the Confidential Information, promptly notify the Contractor of such request. Contractor may thereafter, at its sole cost and expense, seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If Contractor asserts that a record constitutes Confidential Information and Owner reasonably determines that such records could constitute Confidential Information, Owner shall not disclose such record until such time as it is legally compelled to do so by court order (providing that all appellate remedies have been exhausted) and/or Contractor provides its written consent to the Owner. Contractor shall be solely responsible for all fines, fees, and reasonable costs incurred by the Owner in complying with this Section, provided that Contractor shall not be responsible for any such fines, fees, or costs incurred by Owner by reason of its failure to adhere to a court order or failing to comply with the terms of this Agreement. Each party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this confidentiality and non-disclosure commitment. Neither party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Section 15.6.3 or any other term or provision of this Agreement, regardless of whether a claim is based in contract, tort or otherwise. When used herein, "**Confidential Information**" means information provided by one party to the other party in connection with the negotiation or performance of the Agreement, any audit or review of financial books and records, or other agreement (including any exhibits or attachment thereto) that is clearly labeled or designated by the disclosing party as "confidential," "proprietary" or "trade secret" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, and that could reasonably constitute a "trade secret" under Section 812.081(1)(c), Florida Statutes.

### **3. Sovereign Immunity.**

The parties are aware and understand that Owner is a government agency entitled to sovereign immunity under the laws of the State of Florida. This concept, among other matters, limits the liability of Owner in tort actions and also restricts the ability of Owner to provide indemnification and/or insurance beyond the strict limits set forth in the statute on sovereign immunity. As such, notwithstanding any other provisions of this Agreement to the contrary notwithstanding, none of the provisions contained herein shall waive or modify in any way whatsoever the provisions of sovereign immunity as they apply to Owner. Owner does not in any way waive any of the provisions regarding sovereign immunity.

### **4. Waiver of Right to Trial by Jury.**

EACH PARTY HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE CONTRACT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

### **5. Assignment and Subcontractors.**

Owner has selected the Contractor to perform the work based in substantial part on the personal qualifications of the Contractor; as such, the Contractor may not assign or transfer any right or obligation in this Contract in whole or in part, without the prior written consent of Owner, which consent may be granted or withheld in the sole discretion of Owner. Contractor may utilize any of the subcontractors identified in its CNG P3 Proposal to Owner dated September 13, 2013 for the services for which such subcontractors have been identified. In the event that Contractor desires to utilize any additional subcontractors (or utilize any of the identified subcontractors in a role other than which was described in the Proposal for such subcontractors), it shall do so only after obtaining Owner's approval, which approval shall not be unreasonably withheld or delayed. Upon request by Owner, Contractor shall provide Owner with copies of billings and other invoices which may be received from any such subcontractors. Owner shall

have the right from time to time to directly contact and discuss with the subcontractor any work performed by that subcontractor for the purpose of and to the extent necessary to ensure compliance with applicable laws.

**6. Status of Contract Documents.**

It shall be the obligation of the Contractor to, at its expense, have prepared by a licensed engineer the necessary Contract Documents for the Work as well as any and all other documents necessary to obtain permits for the Work. In this regard: (i) as of the date hereof, the plans and specifications (the "**Plans**") have only been approximately thirty percent (30%) prepared; (ii) the Contractor, in consultation with the Owner and its Engineer shall complete the presentation of the Plans by no later than February 15, 2015 (as set forth in the Project Schedule); (iii) the Contractor shall at all times keep the Owner and the Engineer informed as to the completion of the Plans, which Plans are subject to review and approval in any event by the Engineer, which final Plans must be prepared in any event by no later than \_\_\_\_\_, 20\_\_; and (iv) the Contractor shall pay for the fee charged by the Engineer to review and approve the Plans, which Engineer's Review Fee shall not be a part of the Contract Sum.

**7. Inspection by Engineer During Work.**

As set forth in the Contract Documents, the Engineer shall review the status of the work with each application for payment on a monthly basis, notwithstanding that the payment of the Contract Sum will be made after the completion of the Work. The inspection fee for the Engineer shall further be paid by the Contractor and shall not be added to the Contract Sum.

**8. Use by Owner of Facility.**

The Work shall be to an existing facility currently owned and occupied by the Owner. In connection with the Work, it shall be done in such a way as to not unreasonably interfere with the operations of the Owner. In that regard, determinations by the Owner shall be conclusive. Further, the Contractor and its employees, as well as those of any subcontractor shall be subject to the determinations by the Owner as to access, parking and other related matters.

**9. Project Schedule.**

Attached hereto is the schedule setting forth the various items of the Work with the commencement and the completion dates. Contractor shall meet and comply with said schedule.

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 16.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

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Section	Title	Date	Pages

§ 16.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

[Identify 30% construction documents]

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

« »

- 2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Exhibit “A” – Scope of Work

Exhibit “B” – Site Description

[Confirm that neither Davis Bacon , LYNX General Provisions nor any other exhibits are necessary.]

**ARTICLE 17 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Unconditional Payment Bond (in compliance with Section 255.05, Florida Statutes)	Full amount of Contract Sum
Performance Bond	Full amount of Contract Sum

This Agreement entered into as of the day and year first written above.

CENTRAL FLORIDA REGIONAL  
TRANSPORTATION AUTHORITY,  
D/B/A LYNX

NOPETRO C4-HOLDINGS, LLC

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
John M. Lewis, Jr., Chief Executive Officer  
(Printed name and title)

« »  
\_\_\_\_\_  
(Printed name and title)



## ADDENDUM

### Methodology for Payment of Construction Cost Under Maintenance Facilities Construction Contract

1. **Background.** Nopetro (parent) will enter into a construction contract with LYNX to undertake construction of certain modifications to the LYNX Facilities on John Young Parkway to prepare for CNG buses. In this regard:

- (a) The contract will be a cost plus arrangement with the "plus" being a fixed dollar amount to be agreed upon between LYNX and Nopetro.
- (b) There will also be a GMP amount of \$2,579,878.00.

When the construction has all been completed, the cost of construction (i.e., cost plus but not to exceed the GMP) will then be determined and will be the "**Construction Cost**".

2. **Payment of Construction Cost.** LYNX will pay the Construction Cost in monthly amounts over a ten (10) year period determined as follows:

- (a) Subject to any annual adjustment, as set forth below, LYNX will, under the Fuel Purchase Agreement which it has with Nopetro-Orlando, LLC (a subsidiary of Nopetro (parent)), pay monthly the adder amount of \$0.40 (40 cents) for each actual DGE purchased under the Fuel Purchase Agreement. This monthly amount will remain during the ten (10) year period and, on an annual basis, represents the amount that LYNX will pay during the year (the "**Actual Annual Amount Paid**").
- (b) There will, for each year, be determined an annual amount that LYNX will be required to pay (the "**Required Annual Amount**") equal to the sum of the following amounts:
  - (i) Should Nopetro in an arm's length transaction borrow any amount from any unaffiliated third party for the Construction Cost, that amount will be amortized on an annual (and not monthly) basis over ten (10) years at an interest rate equal to the interest rate in the loan documents. This will result in an annual amount; plus
  - (ii) To the extent any portion of the Construction Cost is not represented by such a loan from an unaffiliated third party, then that portion will be divided by ten (10) without any interest being attributed to this amount. This will also result in an annual amount.

The above two annual amounts will then be added to arrive at the annual amount that LYNX will be required to pay for the year (the "**Required Annual Amount**"). For example, if the Construction Cost is \$2,500,000.00 and Nopetro finances with an unaffiliated third party in an arm's length transaction \$2,000,000.00 of that over ten years at four percent (4%), then the annual amount under part (i) above will be \$246,582.00 (this is an estimate and is subject to a correct amortization being done) and the part under part (ii) above will be \$50,000.00 (i.e., the remaining \$500,000.00 divided by ten) for a total amount of \$296,582.00 which is the Required Annual Amount (subject to recalculation from time to time). The Required Annual Amount is then the amount that LYNX would be required to pay at a minimum during that year.

(c) At the end of the year, a determination will be made whether the amount paid under paragraph (a) above (i.e., the Actual Annual Amount Paid) exceeds or is less than the Required Annual Amount. In that regard:

- (i) If the Actual Annual Amount Paid is less than the Required Annual Amount, then LYNX will pay the difference so that, for that year, the total amount paid by LYNX will be equal to the Required Annual Amount.

(ii) If the Actual Annual Amount Paid is greater than the Required Annual Amount (the "**Excess Amount**"), then LYNX will not be required to pay any additional amount for that year; however, for the ensuing year, the calculation under subparagraph (b)(i) above will be redone to determine a new Required Annual Amount for the next year. The Excess Amount will then reduce what the unpaid principal balance would be at the end of the year under the amortization which was done, and that resulting principal amount would then be "re-amortized" over the remainder of the ten-year period (nine years if after the first year) at the same interest rate to arrive at a new annual payment under subparagraph (b)(i), which will then be added to the amount under subparagraph (b)(ii) above to arrive at the new Required Annual Amount. For example, if under the initial amortization schedule under subparagraph (b)(i) above, the principal balance at the end of the year under that amortization schedule would be \$1,833,418.00, and the Excess Amount, for example, was \$25,000.00, then the resulting amount of \$1,808,418.00 would then be amortized over nine (9) years at the interest of four percent (4%) to arrive at a new annual amount under subparagraph (b)(i) above of \$243,220.00, and this new amount when added to the \$50,000.00 under subparagraph (b)(ii) would result in a new Required Annual Amount of \$293,220.00. This process would then be repeated at the end of each year.

For example purposes, assuming that the Actual Annual Amount Paid always equaled the Required Annual Amount, the Schedule attached hereto would show how the payments would be allocated over a ten (10) year period.

(d) LYNX will continue to pay the monthly amount under subparagraph (a) above and any shortage amount under subparagraph (c)(i) above until such time as the total Construction Cost with any applicable interest under subparagraph (b)(i) above was paid in full. At that time, LYNX would have no further obligation to make any such payments.

**NOTES:**

1. In regard to any loan that Nopetro may obtain, LYNX would need to review the loan documents to determine first the interest rate and the term's length transaction.
2. Note that Nopetro is not receiving any interest component on any portion of the Construction Cost that it either funds through equity or affiliated loans.

## Schedule

Year	Per 2(b)(i)				Per 2(b)(ii)			Aggregate LYNX Payments 2(b)(i) + 2(b)(ii)			
	Principal	Interest	Annual Payment	Principal Balance	Principal	Payment	Balance	Principal	Interest	Payment	Balance
1	\$2,000,000	\$80,000	(\$246,582)	\$1,833,418	\$500,000	(\$50,000)	\$450,000	\$2,500,000	\$80,000	(\$296,582)	\$2,283,418
2	\$1,833,418	\$73,337	(\$246,582)	\$1,660,173	\$450,000	(\$50,000)	\$400,000	\$2,283,418	\$73,337	(\$296,582)	\$2,060,173
3	\$1,660,173	\$66,407	(\$246,582)	\$1,479,998	\$400,000	(\$50,000)	\$350,000	\$2,060,173	\$66,407	(\$296,582)	\$1,829,998
4	\$1,479,998	\$59,200	(\$246,582)	\$1,292,616	\$350,000	(\$50,000)	\$300,000	\$1,829,998	\$59,200	(\$296,582)	\$1,592,616
5	\$1,292,616	\$51,705	(\$246,582)	\$1,097,739	\$300,000	(\$50,000)	\$250,000	\$1,592,616	\$51,705	(\$296,582)	\$1,347,739
6	\$1,097,739	\$43,910	(\$246,582)	\$895,066	\$250,000	(\$50,000)	\$200,000	\$1,347,739	\$43,910	(\$296,582)	\$1,095,066
7	\$895,066	\$35,803	(\$246,582)	\$684,287	\$200,000	(\$50,000)	\$150,000	\$1,095,066	\$35,803	(\$296,582)	\$834,287
8	\$684,287	\$27,371	(\$246,582)	\$465,077	\$150,000	(\$50,000)	\$100,000	\$834,287	\$27,371	(\$296,582)	\$565,077
9	\$465,077	\$18,603	(\$246,582)	\$237,098	\$100,000	(\$50,000)	\$50,000	\$565,077	\$18,603	(\$296,582)	\$287,098
10	\$237,098	\$9,484	(\$246,582)	\$0	\$50,000	(\$50,000)	\$0	\$287,098	\$9,484	(\$296,582)	\$0

**NOTE:** The above Schedule is subject to annual review depending on the amounts paid by LYNX and whether they are greater or less than the Required Annual Amount. The above Schedule would be applicable if there was no excess or underpayments during the year.

# DRAFT

#	Name	Start	End	Days	Calendar Days	Predecessors	% Complete	Days Remaining	Priority	Status	Resources
1	Project Award	05/23/14	11/14/14	148	177						
2	Notice of Intent to Negotiate	05/23/14	05/23/14	0	0		0%	0			
3	Contract Negotiations	07/21/14	11/13/14	90	117	2%	0%	90			
4	Notice to Proceed	11/14/14	11/14/14	1	1	3%	0%	1			
5	Design Development & Permitting	11/15/14	04/21/15	130	158						
6	Budgetary Survey	11/19/14	11/20/14	3	6	4%	0%	5			
7	Conceptual Design for Maintenance	11/19/14	12/04/14	15	20	4%	0%	15			
8	Construction/Working Drawings	12/02/14	02/21/15	80	79	7%	0%	60			
9	Permit Submission	02/23/15	04/21/15	50	55	8%	0%	50			
10	Pre-Construction	02/23/15	04/04/15	87	102						
11	Pre-Construction Site Meeting	04/23/15	04/23/15	1	1	8%	0%	1			
12	Pre-Construction Photo Bidding	02/23/15	04/21/15	50	58	8%	0%	50			
13	Prime & Sub-Contractor Negotiations	04/23/15	08/10/15	35	42	12%	0%	35			
14	Over O&M/Overriding Permit & Permit	04/23/15	04/23/15	1	1		0%	1			
15	Over A/E/C/V/Over River Ventilators	04/23/15	04/23/15	1	1		0%	1			
16	Over A/E/C/V/Over Bridge R/C	04/23/15	04/23/15	1	1		0%	1			
17	Over SECA/Overturn/Flycatcher	04/23/15	04/23/15	1	1		0%	1			
18	Over River H/A/C/A/E/B/Series Mock	04/23/15	04/23/15	1	1		0%	1			
19	Over Stream L/Over Bridge	04/23/15	04/23/15	1	1		0%	1			
20	Over Structures Steel Tying for O&M	04/23/15	04/23/15	1	1		0%	1			
21	Update Construction Schedule	09/03/15	08/04/15	2	2	13%	0%	2			
22	Site Work	04/23/15	04/28/15	28	34						
23	Mobilization	04/23/15	04/27/15	4	5	11%	0%	4			
24	Asphalt & Concrete Delivery/W/	04/29/15	04/29/15	10	11	23%	0%	10			
25	Blower/Vacuum/Mat Distribution (old)	05/09/15	05/14/15	5	6	24%	0%	5			
26	Permitting/Overturn Cutting &	04/29/15	05/01/15	4	4	23%	0%	4			
27	Later Mobilization of Mat, Over S&L, Low	05/09/15	05/19/15	7	8	24%	0%	7			
28	Final Submittals & Contract Review	05/19/15	05/21/15	4	4	27%	0%	4			
29	Geotechnical Construction Testing	05/27/15	05/27/15	1	1	28%	0%	1			
30	Asphalt Paving	05/27/15	05/29/15	2	4	28%	0%	2			
31	Concrete	04/23/15	04/28/15	20	23						
32	Site Repair and Walkway	05/19/15	05/21/15	4	4	27%	0%	4			
33	Site Repair Inspection	05/27/15	05/27/15	1	1	30%	0%	1			
34	Final Concrete Placement	05/27/15	05/29/15	2	4	33%	0%	2			
35	Concrete Mill/Asph	04/23/15	04/27/15	9	11	28%	0%	9			
36	The O&M River Inspection	05/13/15	05/13/15	1	1		0%	1			

# DRAFT

#	Name	Start	End	Days	Calendar Days	Prediccessors	% Complete	Days Remaining	Priority	Status	Resources
37	Pool Pumping - V&I 3rd Column	05/14/15	05/14/15	1	1		100%	0			
38	MECHANICAL	05/22/15	06/02/15	8	11		0%				
39	Mechanical/Electrical	05/22/15	05/22/15	1	1		0%	1			
40	Installation of Mechanical/Electrical	05/22/15	06/02/15	7	8	39%	0%	7			
41	Roofing	06/03/15	07/14/15	35	42		0%				
42	Roofing Labor (Floor Decking & Flashing)	06/03/15	07/14/15	35	42	43%	0%	35			
43	MECHANICAL	07/15/15	07/24/15	9	10		0%				
44	MECHANICAL/Electrical	07/15/15	07/15/15	1	1	42%	0%	1			
45	Mechanical/Electrical/Plumbing	07/15/15	07/23/15	7	8	44%	0%	7			
46	Installation of Mechanical/Electrical	07/24/15	07/24/15	1	1	45%	0%	1			
47	MECHANICAL/Electrical	07/15/15	07/23/15	6	6	42%	0%	5			
48	MECHANICAL/Electrical	07/24/15	07/24/15	1	1	47%	0%	1			
49	MECHANICAL	07/15/15	09/01/15	42	49		0%				
50	MECHANICAL/Electrical	07/15/15	07/15/15	1	1	42%	0%	1			
51	MECHANICAL/Electrical	07/15/15	07/15/15	1	1	42%	0%	1			
52	MECHANICAL	07/15/15	08/01/15	40	47	51%	0%	40			
53	MECHANICAL/Electrical	08/01/15	08/01/15	1	1	52%	0%	1			
54	MECHANICAL	07/16/15	08/26/15	62	73		0%				
55	MECHANICAL/Electrical	07/16/15	07/16/15	1	1	50%	0%	1			
56	MECHANICAL/Electrical	07/16/15	07/16/15	1	1	50%	0%	1			
57	MECHANICAL/Electrical	07/16/15	07/16/15	1	1	50%	0%	1			
58	MECHANICAL/Electrical	07/16/15	08/25/15	60	71	57%	0%	60			
59	MECHANICAL/Electrical	08/26/15	08/26/15	0	0	58%	0%	0			
60	MECHANICAL/Electrical	07/17/15	08/20/15	20	23	57%	0%	20			
61	MECHANICAL/Electrical	09/01/15	08/22/15	12	13	60%	0%	12			
62	MECHANICAL/Electrical	07/25/15	09/15/15	48	57		0%				
63	MECHANICAL/Electrical	08/24/15	08/24/15	5	5	61%	0%	5			
64	MECHANICAL/Electrical	07/25/15	07/25/15	4	5	48%	0%	4			
65	MECHANICAL/Electrical	08/23/15	08/15/15	14	16	63%	0%	14			
66	MECHANICAL/Electrical	09/16/15	09/17/15	2	2	69%	0%	2			
67	MECHANICAL/Electrical	09/16/15	09/16/15	2	2	69%	0%	2			
68	MECHANICAL/Electrical	08/24/15	09/14/15	18	22		0%				
69	MECHANICAL/Electrical	09/24/15	09/24/15	12	13	61%	0%	12			
70	MECHANICAL/Electrical	09/24/15	09/24/15	7	8	61%	0%	7			
71	MECHANICAL/Electrical	09/01/15	09/02/15	5	5	79%	0%	5			
72	MECHANICAL/Electrical	09/01/15	09/01/15	0	0	69%	0%	0			



**Methodology for Payment of Construction Cost  
Under Maintenance Facilities Construction Contract**

1. **Background.** Nopetro (parent) will enter into a construction contract with LYNX to undertake construction of certain modifications to the LYNX Facilities on John Young Parkway to prepare for CNG buses. In this regard:

- (a) The contract will be a cost plus arrangement with the "plus" being a fixed dollar amount to be agreed upon between LYNX and Nopetro.
- (b) There will also be a GMP amount of \$2,579,878.00.

When the construction has all been completed, the cost of construction (i.e., cost plus but not to exceed the GMP) will then be determined and will be the "**Construction Cost**".

2. **Payment of Construction Cost.** LYNX will pay the Construction Cost in monthly amounts over a ten (10) year period determined as follows:

(a) Subject to any annual adjustment, as set forth below, LYNX will, under the Fuel Purchase Agreement which it has with Nopetro-Orlando, LLC (a subsidiary of Nopetro (parent)), pay monthly the adder amount of \$0.40 (40 cents) for each actual DGE purchased under the Fuel Purchase Agreement. This monthly amount will remain during the ten (10) year period and, on an annual basis, represents the amount that LYNX will pay during the year (the "**Actual Annual Amount Paid**").

(b) There will, for each year, be determined an annual amount that LYNX will be required to pay (the "**Required Annual Amount**") equal to the sum of the following amounts:

(i) Should Nopetro in an arm's length transaction borrow any amount from any unaffiliated third party for the Construction Cost, that amount will be amortized on an annual (and not monthly) basis over ten (10) years at an interest rate equal to the interest rate in the loan documents. This will result in an annual amount; plus

(ii) To the extent any portion of the Construction Cost is not represented by such a loan from an unaffiliated third party, then that portion will be divided by ten (10) without any interest being attributed to this amount. This will also result in an annual amount.

The above two annual amounts will then be added to arrive at the annual amount that LYNX will be required to pay for the year (the "**Required Annual Amount**"). For example, if the Construction Cost is \$2,500,000.00 and Nopetro finances with an unaffiliated third party in an arm's length transaction \$2,000,000.00 of that over ten years at four percent (4%), then the annual amount under part (i) above will be \$246,582.00 (this is an estimate and is subject to a correct amortization being done) and the part under part (ii) above will be \$50,000.00 (i.e., the remaining \$500,000.00 divided by ten) for a total amount of \$296,582.00 which is the Required Annual Amount (subject to

recalculation from time to time). The Required Annual Amount is then the amount that LYNX would be required to pay at a minimum during that year.

(c) At the end of the year, a determination will be made whether the amount paid under paragraph (a) above (i.e., the Actual Annual Amount Paid) exceeds or is less than the Required Annual Amount. In that regard:

(i) If the Actual Annual Amount Paid is less than the Required Annual Amount, then LYNX will pay the difference so that, for that year, the total amount paid by LYNX will be equal to the Required Annual Amount.

(ii) If the Actual Annual Amount Paid is greater than the Required Annual Amount (the "**Excess Amount**"), then LYNX will not be required to pay any additional amount for that year; however, for the ensuing year, the calculation under subparagraph (b)(i) above will be redone to determine a new Required Annual Amount for the next year. The Excess Amount will then reduce what the unpaid principal balance would be at the end of the year under the amortization which was done, and that resulting principal amount would then be "re-amortized" over the remainder of the ten-year period (nine years if after the first year) at the same interest rate to arrive at a new annual payment under subparagraph (b)(i), which will then be added to the amount under subparagraph (b)(ii) above to arrive at the new Required Annual Amount. For example, if under the initial amortization schedule under subparagraph (b)(i) above, the principal balance at the end of the year under that amortization schedule would be \$1,833,418.00, and the Excess Amount, for example, was \$25,000.00, then the resulting amount of \$1,808,418.00 would then be amortized over nine (9) years at the interest of four percent (4%) to arrive at a new annual amount under subparagraph (b)(i) above of \$243,220.00, and this new amount when added to the \$50,000.00 under subparagraph (b)(ii) would result in a new Required Annual Amount of \$293,220.00. This process would then be repeated at the end of each year.

For example purposes, assuming that the Actual Annual Amount Paid always equaled the Required Annual Amount, the Schedule attached hereto would show how the payments would be allocated over a ten (10) year period.

(d) LYNX will continue to pay the monthly amount under subparagraph (a) above and any shortage amount under subparagraph (c)(i) above until such time as the total Construction Cost with any applicable interest under subparagraph (b)(i) above was paid in full. At that time, LYNX would have no further obligation to make any such payments.

**NOTES:**

1. In regard to any loan that Nopetro may obtain, LYNX would need to review the loan documents to determine first the interest rate and the arm's length transaction.
2. Note that Nopetro is not receiving any interest component on any portion of the Construction Cost that it either funds through equity or affiliated loans.



## Schedule

Year	Per 2(b)(i)				Per 2(b)(ii)			Aggregate LYNX Payments 2(b)(i) + 2(b)(ii)			
	Principal	Interest	Annual Payment	Principal Balance	Principal	Payment	Balance	Principal	Interest	Payment	Balance
1	\$2,000,000	\$80,000	(\$246,582)	\$1,833,418	\$500,000	(\$50,000)	\$450,000	\$2,500,000	\$80,000	(\$296,582)	\$2,283,418
2	\$1,833,418	\$73,337	(\$246,582)	\$1,660,173	\$450,000	(\$50,000)	\$400,000	\$2,283,418	\$73,337	(\$296,582)	\$2,060,173
3	\$1,660,173	\$66,407	(\$246,582)	\$1,479,998	\$400,000	(\$50,000)	\$350,000	\$2,060,173	\$66,407	(\$296,582)	\$1,829,998
4	\$1,479,998	\$59,200	(\$246,582)	\$1,292,616	\$350,000	(\$50,000)	\$300,000	\$1,829,998	\$59,200	(\$296,582)	\$1,592,616
5	\$1,292,616	\$51,705	(\$246,582)	\$1,097,739	\$300,000	(\$50,000)	\$250,000	\$1,592,616	\$51,705	(\$296,582)	\$1,347,739
6	\$1,097,739	\$43,910	(\$246,582)	\$895,066	\$250,000	(\$50,000)	\$200,000	\$1,347,739	\$43,910	(\$296,582)	\$1,095,066
7	\$895,066	\$35,803	(\$246,582)	\$684,287	\$200,000	(\$50,000)	\$150,000	\$1,095,066	\$35,803	(\$296,582)	\$834,287
8	\$684,287	\$27,371	(\$246,582)	\$465,077	\$150,000	(\$50,000)	\$100,000	\$834,287	\$27,371	(\$296,582)	\$565,077
9	\$465,077	\$18,603	(\$246,582)	\$237,098	\$100,000	(\$50,000)	\$50,000	\$565,077	\$18,603	(\$296,582)	\$287,098
10	\$237,098	\$9,484	(\$246,582)	\$0	\$50,000	(\$50,000)	\$0	\$287,098	\$9,484	(\$296,582)	\$0

**NOTE:** The above Schedule is subject to annual review depending on the amounts paid by LYNX and whether they are greater or less than the Required Annual Amount. The above Schedule would be applicable if there was no excess or underpayments during the year.

#	Name	Start	End	Days	Calendar Days	Predecessors	% Complete	Days Remaining	Priority	Status	Resources
1	▼ Project Award	05/23/14	11/14/14	148	177						
2	Notice of Intent to Negotiate	05/23/14	05/23/14	0	0		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	0			
3	Contract Negotiations	07/21/14	11/13/14	99	117	2fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	99			
4	Notice to Proceed	11/14/14	11/14/14	1	1	3fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
5	▼ Design Development & Permitting	11/15/14	04/21/15	130	158						
6	Boundary Survey	11/15/14	11/20/14	5	6	4fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	5			
7	Conceptual Design for Maintenance Construction/Working Drawings	11/15/14	12/04/14	15	20	4fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	15			
8	Permit Submission	12/05/14	02/21/15	65	79	7fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	65			
9	▼ Pre-Construction	02/23/15	06/04/15	87	102						
11	Re-Construction Site Meeting	04/22/15	04/22/15	1	1	9fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
12	Re-Construction Price Bidding	02/23/15	04/21/15	50	58	8fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	50			
13	Prime & Sub-Contractor Negotiations	04/22/15	06/02/15	35	42	12fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	35			
14	Order ONG De-Fueling Post & Panel	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
15	Order AERO Vent Roof Ventilators	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
16	Order Allen Bradley Meridlogic PLC	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
17	Order SEC Millennium HT Hydrocarbon Purification	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
18	Order Feznor HVACAB Series Mode 1	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
19	Order Siemens LYC-40 IR Malhane Purification System	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
20	Order Stainless Steel Tubing for ONG Purification Deck	04/22/15	04/22/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
21	Update Construction Schedule	06/03/15	06/04/15	2	2	13fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	2			
22	▼ Site Work	04/23/15	05/26/15	28	34						
23	Mobilization	04/23/15	04/27/15	4	5	11fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	4			
24	Asphalt & Concrete Cutting w/ Excavation	04/28/15	05/08/15	10	11	23fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	10			
25	Exterior Masonry Wall Demolition (cut Ventilation openings)	05/09/15	05/14/15	5	6	24fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	5			
26	Reinforce Wall Concrete Cutting & Removal	04/28/15	05/01/15	4	4	23fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	4			
27	Labor Installation of Nat. Gas S.S. Line for steel fabrication	05/09/15	05/16/15	7	8	24fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	7			
28	Replace Sub-Base & Compact Patches	05/18/15	05/21/15	4	4	27fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	4			
29	Geotechnical Compaction Testing	05/22/15	05/22/15	1	1	28fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
30	Asphalt Paving	05/23/15	05/26/15	2	4	29fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	2			
31	▼ Concrete	05/02/15	05/26/15	20	25						
32	Slab Rebar and VM Installation	05/18/15	05/21/15	4	4	27fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	4			
33	Slab Rebar Inspection	05/22/15	05/22/15	1	1	32fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			
34	Pour Concrete Patches	05/23/15	05/26/15	2	4	33fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	2			
35	Concrete Wall Labor	05/02/15	05/12/15	9	11	26fs	<div style="width:0%; height:10px; background-color:blue;"></div> 0%	9			
36	The Column Rebar Inspection	05/13/15	05/13/15	1	1		<div style="width:0%; height:10px; background-color:blue;"></div> 0%	1			

#	Name	Start	End	Days	Calendar Days	Predecessors	% Complete	Days Remaining	Priority	Status	Resources
37	Pour Reinforce Wall Tie Columns	09/14/15	09/14/15	1	1		<input type="checkbox"/> 0%	1			
38	▼ Masonry	05/23/15	06/02/15	8	11		<input type="checkbox"/> 0%				
39	Masonry Block Delivery	05/23/15	05/23/15	1	1		<input type="checkbox"/> 0%	1			
40	Installation of Masonry Block Patches	05/26/15	06/02/15	7	8	39fs	<input type="checkbox"/> 0%	7			
41	▼ Roofing	06/03/15	07/14/15	35	42		<input type="checkbox"/> 0%				
42	Roofing Labor (Repair Decking & Seal Joints)	08/03/15	07/14/15	35	42	40fs	<input type="checkbox"/> 0%	35			
43	▼ Plumbing	07/15/15	07/24/15	9	10		<input type="checkbox"/> 0%				
44	ONG Equipment Delivery	07/15/15	07/15/15	1	1	42fs	<input type="checkbox"/> 0%	1			
45	Natural Gas Defueling Post to Panel	07/16/15	07/23/15	7	8	44fs	<input type="checkbox"/> 0%	7			
46	Inspection of Nat. Gas Piping	07/24/15	07/24/15	1	1	45fs	<input type="checkbox"/> 0%	1			
47	Run HVAC Drain Lines	07/15/15	07/20/15	5	6	42fs	<input type="checkbox"/> 0%	5			
48	Flashing Inspection for roof & new HVAC Exhaust	07/21/15	07/21/15	1	1	47fs	<input type="checkbox"/> 0%	1			
49	▼ HVAC System	07/15/15	09/01/15	42	49		<input type="checkbox"/> 0%				
50	Delivery of Return HVAC Equipment	07/15/15	07/15/15	1	1	42fs	<input type="checkbox"/> 0%	1			
51	Delivery of AERO Ventilators	07/15/15	07/15/15	1	1	42fs	<input type="checkbox"/> 0%	1			
52	HVAC Labor	07/16/15	08/31/15	40	47	51fs	<input type="checkbox"/> 0%	40			
53	HVAC Rough-in Inspection	09/01/15	09/01/15	1	1	52fs	<input type="checkbox"/> 0%	1			
54	▼ Electrical Systems	07/16/15	09/26/15	62	73		<input type="checkbox"/> 0%				
55	Delivery of Siemens Methane Detector	07/16/15	07/16/15	1	1	50fs	<input type="checkbox"/> 0%	1			
56	Delivery of SEC Millennium Detectors	07/16/15	07/16/15	1	1	50fs	<input type="checkbox"/> 0%	1			
57	Delivery of the Meridlog PLC	07/16/15	07/16/15	1	1	50fs	<input type="checkbox"/> 0%	1			
58	Electrical Labor (Installation of New Overhead 11kVie. Mainline Protection	07/17/15	09/25/15	60	71	57fs	<input type="checkbox"/> 0%	60			
59	Electrical Rough-in Inspection	09/26/15	09/26/15	0	0	58fs	<input type="checkbox"/> 0%	0			
60	Electrical Misc. (Generator Connection	07/17/15	08/08/15	20	23	57fs	<input type="checkbox"/> 0%	20			
61	Testing & Start-Up	08/10/15	08/22/15	12	13	60fs	<input type="checkbox"/> 0%	12			
62	▼ Finishes (Framing, Stucco, Paint, etc.)	07/25/15	09/19/15	48	57		<input type="checkbox"/> 0%				
63	Mechanically wet scrub & prepare floors for new coat	08/24/15	08/29/15	5	5	61fs	<input type="checkbox"/> 0%	5			
64	Stucco Exterior Wall	07/25/15	07/29/15	4	5	46fs	<input type="checkbox"/> 0%	4			
65	Paint Interior Epoxy floor paint, floor patches & ceiling touch	08/29/15	09/15/15	14	18	63fs	<input type="checkbox"/> 0%	14			
66	Pressure Wash Exterior	09/16/15	09/17/15	2	2	65fs	<input type="checkbox"/> 0%	2			
67	Exterior Paint	09/18/15	09/19/15	2	2	66fs	<input type="checkbox"/> 0%	2			
68	▼ Final Inspections	08/24/15	09/14/15	18	22		<input type="checkbox"/> 0%				
69	Equipment Commissioning	08/24/15	09/05/15	12	13	61fs	<input type="checkbox"/> 0%	12			
70	Final Site Clean-Up	08/24/15	08/31/15	7	8	61fs	<input type="checkbox"/> 0%	7			
71	Punch List	09/01/15	09/05/15	5	5	70fs	<input type="checkbox"/> 0%	5			
72	Temporary Certificate of Occupancy (Substantial Completion)	09/08/15	09/08/15	0	0	69fs	<input type="checkbox"/> 0%	0			



# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

LYNX Bus Depot and Maintenance Facility

[Building A

2500 LYNX Lane

Orlando, FL 32804][Confirm address]Modification of bus depot and maintenance facility to ensure that the facility complies with applicable standards and codes for a CNG servicing and maintenance facility.

THE OWNER:

(Name and address)

Central Florida Regional Transportation Authority, d/b/a LYNX

455 North Garland Avenue

Orlando, Florida 32801

THE ENGINEER:

(Name and address)

[TBD]

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#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



# DRAFT AIA<sup>®</sup> Document A201<sup>™</sup> - 2007

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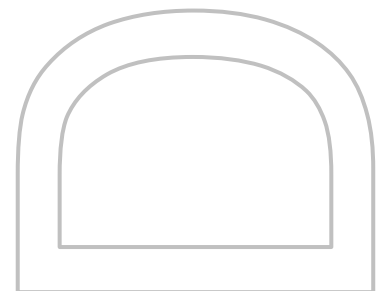
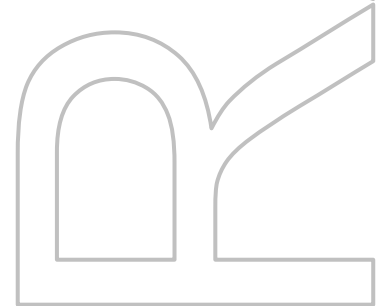
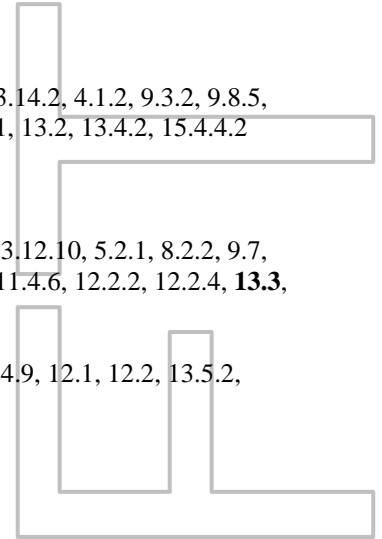
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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Engineers.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Engineer and the Engineer’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer’s or Engineer’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer’s consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Engineer does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or



the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the name and qualifications of a proposed superintendent. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that the Engineer requires additional time to review. Failure of the Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be



required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, and subject to the limitations contained in Section 725.06, Florida Statutes, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ENGINEER

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate For Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.



§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Engineer makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; a Construction Change Directive requires agreement by the Owner and Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified. The Engineer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Engineer and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Engineer in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Engineer, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.



§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Engineer withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer and the Engineer will reflect such payment on the next Certificate for Payment.

§ 9.6 THIS SECTION IS NOT APPLICABLE.

#### § 9.7 FAILURE OF PAYMENT

If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Engineer or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from



- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by

a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Engineer and the Engineer's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer’s and Contractor’s services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days’ prior written notice has been given to the Contractor.

### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds, in form and substance acceptable to Owner, covering faithful performance of the Contract and unconditional payment of obligations arising thereunder on the date of execution of the Contract, each in the full amount of the Contract Sum.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such



costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

## § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

## § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer.

§ 13.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and



after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Engineer, if the Engineer is not serving as the Initial Decision Maker.

Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the 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 the Contractor 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 Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial

Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Engineer, if the Engineer is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.