



**DOC 80**  
**COMMERCIAL FIXED-PRICE CONSTRUCTION SUBCONTRACTS**

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**DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

- (a) "Claim" is a demand or assertion by ULA or CONTRACTOR seeking, as a matter of right, adjustment or interpretation of the Contract, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between ULA and CONTRACTOR rising out of or relating to the Contract. Claims must be made by Notice in the manner provided herein.
- (b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments. Unless specifically enumerated, the Contract does not include other documents, including but not limited to, bidding requirements, advertisement or invitation to bid, instructions to bidders, sample forms, the CONTRACTOR's bid or portions of addenda relating to bidding requirements.
- (c) "CONTRACTOR" means the Party identified on the face of the Contract with whom ULA is contracting. CONTRACTOR shall mean the same as supplier, seller, vendor or other such type designation.
- (d) "Modification" is a written amendment to the initial Contract signed by both Parties
- (e) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.
- (f) "Project" shall mean the building, facility or other improvements for which the CONTRACTOR is to perform the Work under the Contract
- (g) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by the CONTRACTOR or Subcontractors in such construction, which can reasonably be said to be included in the "site".
- (h) "Subcontract" means all contracts placed by the CONTRACTOR or lower tier Subcontractors for the specific purpose of performing any portion of the Work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.
- (i) "Subcontractors" means CONTRACTOR's subcontractors, vendors, or suppliers at any tier.
- (j) "Substantial Completion of the Work", or of a designated portion, occurs at Initial Operational Capability, which is the date upon which all functional testing is complete and validates that all systems are fully functional and operating in accordance with the

Contract specifications. This date shall be confirmed by a Certificate of Substantial Completion signed by ULA and the CONTRACTOR.

(k) "ULA" means United Launch Alliance, LLC, as identified on the face of this Contract.

(l) "Work" means the construction and services required by this Contract whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CONTRACTOR to fulfill the CONTRACTOR's obligations.

### **1. ACCEPTANCE, MERGER AND SEVERABILITY**

(a) CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.

(b) Unless expressly accepted in writing by ULA, additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment are objected to by ULA and have no effect.

(c) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(d) Each clause, paragraph and sub-paragraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

### **2. APPLICABLE LAWS**

This Contract, and all claims relating to or arising out of this Contract, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed in accordance with the laws of the State of Colorado, excluding that State's choice-of-law principles. Any lawsuit filed regarding this Contract shall be filed in either the Colorado District Court located in Arapahoe County, Colorado or the United States District Court located in Denver, Colorado. CONTRACTOR further agrees that the substantive law of Colorado shall apply in such lawsuit without regard to the conflict of law rules of Colorado. CONTRACTOR hereby consents to the jurisdiction and venue of both the Colorado District Court located in Arapahoe County, Colorado and the United States District Court located in Denver, Colorado. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

### **3. ASSIGNMENT**

CONTRACTOR shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract without ULA's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, CONTRACTOR may assign its rights or interests in this Contract to an entity that purchases all or substantially all of the assets of CONTRACTOR without obtaining prior consent, provided that CONTRACTOR provides ULA with notice of the assignment.

CONTRACTOR may assign rights to be paid amounts due, or to become due, to a financing institution if ULA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of ULA against CONTRACTOR. ULA shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

### **4. BONDS**

(a) If the price of this contract is \$500,000.00 or greater, CONTRACTOR shall furnish to ULA, within ten days after award of this contract:

- (1) a performance bond.
- (2) a payment bond.

(or reasonably acceptable industry substitute approved by ULA). Each bond shall be in an amount equal to one hundred percent (100%) of the contract price and shall be on an approved ULA form.

(b) If the price of this contract is less than \$500,000.00 and it is determined by ULA to be necessary, CONTRACTOR shall, after receipt of a request from ULA, furnish performance and payment bonds in the amount acceptable to ULA. When so requested,

CONTRACTOR shall be entitled to an equitable adjustment reflecting premiums for the bonds. The bonds of any surety company holding a certificate of authority from the Secretary of Treasury as an acceptable surety of Federal bonds will be accepted.

- (c) In the event that CONTRACTOR is unable to furnish satisfactory bonds, this contract may be terminated for default, at ULA's sole discretion, in, accordance with ARTICLE 40 - TERMINATION FOR DEFAULT.
- (d) Date of Bonds - Bonds required hereunder shall be dated before or within 10 days of the date of execution of this Contract.
- (e) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, CONTRACTOR shall secure a Bond Rider to the effect that the Surety waives notice and Right of Discharge by reason of such action, and increasing the penal sum of the bond to 100% of the Contract Price as modified.
- (f) Bonds will also contain a provision to the effect that if CONTRACTOR fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract, Surety shall not be released of liability under existing bonds or any riders issued thereto. ULA shall have the right to withhold any payments due CONTRACTOR hereunder until such time as the CONTRACTOR secures the bonds required or riders thereto, and the same have been approved by ULA.

## **5. CHANGES**

(a) Only the ULA Procurement Representative has the authority to make changes to this Contract. All changes must be in writing and executed by the parties.

(b) Within the general scope of this Contract, the Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract, in any one or more of the following:

- (1) Drawings, designs, processes, or specifications;
- (2) Description of services
- (3) Inspection, delivery, or acceptance methods and/or schedules; and
- (4) Work schedules or time of performance (i.e., hours of the day, days of the week, etc.)
- (5) Terms and conditions of this Contract required to meet ULA's obligations to its customers

(c) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, ULA shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly.

(d) CONTRACTOR must request any equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from ULA. If the CONTRACTOR's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, ULA shall have the right to prescribe the manner of disposition of the property.

(e) Prior to the issuance of a change order under this Contract, ULA may solicit from the CONTRACTOR written agreement as to the maximum (in the case of an increase) or minimum (in the case of a decrease) adjustment to be made in the price and/or in the schedule (or time of performance), by reason of the change. ULA may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" (or "no-less-than") amount or maximum (or minimum) schedule adjustment when so requested by ULA. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum (or be less than the minimum) price and/or delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.

(f) ULA's engineering and technical personnel may from time to time render assistance or give technical advice to, or effect an exchange of information with, CONTRACTOR personnel in a liaison effort concerning the Work to be performed hereunder. However, such exchange of information or advice shall not vest the CONTRACTOR with the authority to change the Work to be performed hereunder or the provisions of the Contract, nor shall such change in Work or provisions of the Contract be binding upon ULA unless incorporated as a change in accordance with paragraph (a) hereof.

(g) Unless expressly stipulated elsewhere in the Contract as being excepted from this provision, wherever the Contract provides for submittal of designs, components, processes, or other items for review or approval by ULA, such reviews or approvals shall not be

construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be responsible for meeting all the requirements of the contract.

(h) Failure to agree to any adjustment shall be a dispute under the Claims and Disputes clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with this Contract as changed.

(i) Minor Changes in the Work. When specifically stated in the Contract, the ULA Procurement Representative will have authority to order minor changes in the Work without adjustment in the Contract Price or extension of the Contract Construction Schedule. The threshold, if any, for no cost changes will be referenced in the Contract. Such changes shall be effected by written order and shall be binding on ULA and CONTRACTOR. CONTRACTOR shall carry out such written orders promptly.

## **6. CLAIMS AND DISPUTES**

(a) WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, CONTRACTOR shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If CONTRACTOR continues to perform, ULA shall continue to make payments in accordance with the Contract.

(b) DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of the Contract, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the dispute remains unresolved within a reasonable time from the date of first discussion, the Parties may submit such matter to the dispute resolution procedures described below.

(c) MEDIATION. If direct discussions pursuant to Paragraph (b) do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. Either Party may terminate the mediation at any time after the first session, and the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties. The mediation shall be non-binding.

(d) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity.

(e) MULTIPARTY PROCEEDING. The Parties agree that all Parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

## **7. COMPLIANCE WITH LAWS**

(a) CONTRACTOR shall, at its own expense, give all Notices and comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations bearing on the conduct of the Work as drawn and specified and shall (unless otherwise specified in Contract documents), without expense to ULA, obtain all licenses and permits required for the Work.

(b) CONTRACTOR shall be responsible for all defense costs, fines, penalties or other sanctions and remedial costs based on CONTRACTOR's failure to comply with applicable laws, rules or regulations which are CONTRACTOR's responsibility under the Contract. CONTRACTOR agrees to indemnify, defend and hold harmless ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

(c) CONTRACTOR represents and warrants that it is not included on the Excluded Parties List System (EPLS) and agrees to notify ULA immediately upon learning that it or any of its affiliates and/or Subcontractors has been included or proposed for inclusion in the Excluded Parties List System (EPLS).

## **8. CONSTRUCTION SCHEDULE/TIMELY PERFORMANCE**

(a) Time limits stated in the Contract are of the essence.

(b) Unless instructed by ULA in writing, CONTRACTOR shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the CONTRACTOR or ULA.

(c) CONTRACTOR shall, prior to commencement of Work, prepare and submit for approval a practicable construction schedule and report ("Construction Schedule" or "Contract Construction Schedule"), showing the order in which the CONTRACTOR proposes to carry on the Work, the date on which it will start the several salient features of the Work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The Construction Schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time.

(d) CONTRACTOR shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the performance of the Work in accordance with the approved Construction Schedule. If, in the opinion of ULA, CONTRACTOR falls behind the Construction Schedule, CONTRACTOR shall take such steps as may be necessary to improve its progress, and ULA may require it to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment at no additional cost to ULA. Any direction issued to the CONTRACTOR to provide premium labor in any form must first be coordinated with and approved by the Procurement Representative.

(e) If CONTRACTOR is delayed at any time in the commencement or progress of the Work by any cause beyond the reasonable control of the CONTRACTOR, except financial inability to perform, CONTRACTOR shall be entitled to an equitable extension of the Date of Substantial Completion, the Date of final completion or an equitable extension of time in accordance with the Changes clause. Examples of causes beyond the control of CONTRACTOR include, but are not limited to, the following: acts or omissions of ULA or Others; changes in the Work or the sequencing of the Work ordered by ULA which CONTRACTOR cannot reasonably accommodate without modifying the Schedule of Work, or arising from decisions of ULA that impact the time of performance of the Work which CONTRACTOR cannot reasonably accommodate without modifying the Schedule of Work; transportation delays not reasonably foreseeable; labor disputes not involving CONTRACTOR or its Subcontractors impacting the Project; fire, terrorism, epidemics, adverse governmental actions, adverse weather conditions not reasonably anticipated for the area in which the Work is being performed, encountering Hazardous Materials, concealed or unknown conditions; or delay authorized by ULA under Section 38. CONTRACTOR acknowledges and agrees that adjustments in the Schedule of Work will not be permitted if such delay (i) is caused by CONTRACTOR, or (ii) could have been limited or avoided by CONTRACTOR's timely notice to ULA of the delay.

(f) In addition, if the CONTRACTOR incurs additional costs as a result of a delay that is caused by acts or omissions of ULA or other changes in the Work or the sequencing of the Work ordered by ULA, or arising from decisions of ULA that impact the time of performance of the Work, discovery of Hazardous Materials, or concealed or unknown conditions, delay authorized by ULA under Section 38, the CONTRACTOR shall be entitled to an equitable adjustment in accordance with Changes clause of the Contract.

(g) ULA may undertake or award other contracts for additional work to be performed in connection with or in or about the work under the Contract. The CONTRACTOR shall cooperate with ULA and its other CONTRACTORS and coordinate CONTRACTOR work activities with the activities of ULA personnel and other CONTRACTORS so that all work may be promptly and properly performed without undue interference or delay. The CONTRACTOR shall afford ULA and its other CONTRACTORS' reasonable opportunity for the timely execution of their work.

## **9. CONTRACT DIRECTION**

(a) Only the ULA Procurement Representative has authority to modify this Contract. Such modifications must be in writing.

(b) ULA engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with CONTRACTOR's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for a Claim. No reimbursement shall be made for any extra work or material unless the same has been ordered in writing by the authorized ULA Procurement Representative.

(c) All Notices to be furnished by CONTRACTOR to ULA shall be in writing and delivered to and acknowledged in writing by the ULA Procurement Representative.

(d) All Notices to be furnished by ULA to CONTRACTOR shall be in writing and delivered to CONTRACTOR's Superintendent.

## **10. DIFFERING SITE CONDITIONS**

(a) If in the performance of the Work the CONTRACTOR finds latent, concealed or subsurface physical conditions which materially differ from the conditions the CONTRACTOR reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in the Contract, CONTRACTOR shall promptly, and before the conditions are disturbed, but in no event later than 48 hours after discovery, give a written notice to the Procurement Representative of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract.

(b) If after the commencement of the Work, Hazardous conditions, including hazardous materials, are discovered, that could pose a risk to life, health or the environment, the CONTRACTOR shall immediately stop Work in the affected area and report the condition to ULA. Upon receipt of such report, ULA shall take appropriate measures to further assess the site condition and will meet and confer with the CONTRACTOR to mutually agree upon a course of action. The CONTRACTOR shall resume Work in the affected area after 1) the hazard has been removed or rendered harmless, or 2) alternative safety and health measures have been implemented allowing continuation of the Work.

(c) The ULA Procurement Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in CONTRACTOR 's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment accounting solely for CONTRACTOR increased costs or additional time of performance (with no allowance for profit) may be made under this clause and this Contract modified in writing accordingly.

(d) No request by CONTRACTOR for an equitable adjustment to this Contract under this clause shall be allowed, unless CONTRACTOR has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Procurement Representative upon good cause shown.

(e) No request by CONTRACTOR for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

## **11. DRUG FREE WORKPLACE**

Pursuant to the Drug Free Workplace Act of 1998 ULA does not allow the presence of illegal drugs, or any person under the influence of such illegal drugs or alcohol, on its premises. All persons, vehicles and materials on ULA premises are subject to search and testing. The CONTRACTOR shall implement its own system to both preclude the presence and influence of alcohol and illegal drugs on ULA premises and to report any violation thereof with corrective action, to the Procurement Representative in writing within 30 days of such violations. Failure to comply with these provisions, including failure of any of CONTRACTOR's employees or Subcontractor's employees to consent to a blood test or urinalysis test when requested, based on reasonable suspicion, will result in removal of the CONTRACTOR's employee or Subcontractor's employee from performance on this Contract. CONTRACTOR shall insert the substance of this clause in all Subcontracts.

## **12. EXPORT CONTROL**

(a) Technical data, defense services, software and/or hardware furnished under or in connection with the Contract may be subject to U.S. export or import control laws and regulations and may be subject to export or import laws and regulations of other countries. All Parties agree to comply with all such laws and regulations, including obtaining the appropriate USG authorization prior to exporting to a Foreign Person within the U.S. or abroad, as applicable.

(b) CONTRACTOR certifies that only U.S. Persons, as defined in 22 CFR 120.15, will be recipients of subject data, services, software and/or hardware and participate directly in telecons, meetings and/or email with ULA. If direct participation by Foreign Persons is required, prior notice must be provided by CONTRACTOR to ensure that the appropriate export authorizations are in place. CONTRACTOR shall not distribute, transfer, or transmit any export controlled item, information or services (even if incorporated into other products), to include transfer to foreign persons employed by or associated with, or under contract to the receiving Party, except in compliance with applicable export laws and authorities. CONTRACTOR further certifies that it has a US-based Information Technology system with access controls to prevent access to subject data by Foreign Persons. All work pursuant to this Contract shall be performed in the United States. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(c) CONTRACTOR is required to be registered with the State Department, Directorate of Defense Trade Controls, if it engages in the business of either exporting or manufacturing (whether exporting or not) defense articles (i.e. ITAR-controlled parts, technical data) or furnishing of defense services, and represents that it maintains an effective export and import compliance program.

(d) The exporter of record, who directly exports to a Foreign Person, has the ultimate responsibility to determine export jurisdiction, applicable license requirements, and to meet the applicable export laws and regulations.

(e) The CONTRACTOR agrees to reasonably cooperate with ULA for assessments, audits and other fact-finding required to ensure compliance to U.S. export/import laws and regulations or as part of an investigation or corrective action related to a potential or actual

violation of U.S. export/import laws and regulations. The CONTRACTOR will provide input for such activities in a timely and accurate manner. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(f) The CONTRACTOR agrees to provide timely and accurate reporting of fees and commissions paid related to Part 130 of the ITAR, when applicable. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(g) For any shipment exported from the United States in which ULA is the U.S. Principal Party in Interest (USPPI), ULA prohibits the filing of Electronic Exporter Information (EEI) via the Automated Export System (AES) by any party except ULA or a ULA-approved forwarder.

(h) When CONTRACTOR is responsible for clearing the Work through United States Customs, CONTRACTOR will neither cause nor permit ULA's name to be shown as "Importer Of Record" on any customs declaration form or other documentation.

(i) CONTRACTOR shall indemnify and hold harmless ULA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, suppliers, or Subcontractors in relation to its export/import activities. Any limitation of liability in this Contract shall not apply to this clause.

### **13. FURNISHED PROPERTY**

(Applicable if any property owned by either ULA or its customer(s) is furnished to the CONTRACTOR under this Contract.)

(a) ULA may provide to CONTRACTOR property owned by either ULA or ULA's Customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Furnished Property.

(1) ULA shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the Furnished Property described in the Contract or Specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property.

(2) If Furnished Property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt of it, notify ULA detailing the facts, and, as directed by the ULA Procurement Representative and at ULA's expense, either repair, modify, return, or otherwise dispose of the property. This provision does not apply to property furnished "as is".

(c) Changes in Furnished Property.

ULA may, by written Notice, (i) decrease the Furnished Property provided or to be provided under this Contract, or (ii) substitute other Furnished Property for the property to be provided by ULA or to be acquired by the CONTRACTOR for ULA, under this Contract. The CONTRACTOR shall promptly take such action as ULA may direct regarding the removal, shipment, or disposal of the property covered by such Notice.

(d) Title in Furnished Property.

(1) ULA or its customer shall retain title to all Furnished Property.

(2) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for ULA under this Contract shall pass to and vest in ULA when its use in performing this Contract commences or when ULA has paid for it, whichever is earlier, whether or not title previously vested in ULA.

(3) If this Contract contains a provision directing the CONTRACTOR to purchase material for which ULA will reimburse the CONTRACTOR as a direct item of cost under this Contract –

(a) Title to material purchased from a vendor shall pass to and vest in ULA upon the vendor's delivery of such material; and

(b) Title to all other material shall pass to and vest in ULA upon -

(i) Issuance of the material for use in Contract performance;

(ii) Commencement of processing of the material or its use in Contract performance; or

(iii) Reimbursement of the cost of the material by ULA, whichever occurs first.

(e) Property administration.

(1) The CONTRACTOR shall be responsible and accountable for all Furnished Property provided under this Contract.

(2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Furnished Property.

(f) Access. ULA and its designees shall have access at all reasonable times to the premises in which any Furnished Property is located for the purpose of inspecting the Furnished Property.

(g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, Furnished Property upon its delivery to the CONTRACTOR or upon passage of title to ULA under paragraph (d) of this clause and for any other direct, indirect, special, incidental or consequential damages caused to ULA on account of such loss, destruction or damage. However, the CONTRACTOR is not responsible for reasonable wear and tear to Furnished Property or for Furnished Property properly consumed in performing this Contract.

(h) ULA shall not be liable for breach of contract or otherwise for –

(1) Any delay in delivery of Furnished Property;

(2) Delivery of Furnished Property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Furnished Property; or

(4) Failure to repair or replace Furnished Property for which ULA is responsible.

(i) Final accounting and disposition of Furnished Property. Upon completing this Contract, or at such earlier dates as may be fixed by ULA, the CONTRACTOR shall submit, in a form acceptable to ULA, inventory schedules covering all items of Furnished Property (including any resulting scrap) not consumed in performing this Contract or delivered to ULA. The CONTRACTOR shall prepare for shipment, delivery f.o.b. origin, or dispose of the Furnished Property as may be directed or authorized by ULA. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to ULA as ULA directs.

(j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, ULA:

(1) May abandon any Furnished Property in place, at which time all obligations of ULA regarding such abandoned property shall cease; and

(2) Have no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Contract completion).

#### **14. GRATUITIES/KICKBACKS**

(a) No gratuities (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier, and no kickbacks, shall be offered or given by CONTRACTOR to any employee of ULA.

(b) CONTRACTOR shall contact ULA's Office of Internal Governance, at 1-800-511-4173, if any employee of ULA requests a gratuity and/or kickback.

#### **15. INDEPENDENT CONTRACTOR RELATIONSHIP**

CONTRACTOR is an independent CONTRACTOR for all purposes. CONTRACTOR shall have complete control over the performance of, and the details for accomplishing, the terms of the Contract. In no event shall CONTRACTOR or its agents, representatives or employees be deemed to be agents, representatives or employees of ULA. CONTRACTOR shall be solely responsible for its employees to include payment of all compensation and benefits, for all Work performed. CONTRACTOR shall comply with all requirements and obligations relating to such employees under employment contracts and federal, state and local law. Should a CONTRACTOR employee claim that it is an employee of ULA or file a claim for compensation or benefits, CONTRACTOR shall indemnify and defend ULA against any such claim. CONTRACTOR shall also indemnify and defend ULA



against any liability, fine or penalty that may be imposed upon ULA for CONTRACTOR's failure to comply with its employment contracts or federal, state or local law.

## **16. INFORMATION OF ULA**

CONTRACTOR agrees to comply with the terms of any Confidentiality Agreement entered into by the parties and respect any proprietary and other restrictive markings that may be applied by ULA to anything provided hereunder to CONTRACTOR. Information provided by ULA to CONTRACTOR remains the property of ULA and such information, including tangible items conveying or embodying such information, is deemed the proprietary, confidential and/or trade secret information of ULA. Such information may be used by CONTRACTOR solely in accordance with the terms of any Confidentiality Agreement and for the purposes of this Contract. Except as authorized by any Confidentiality Agreement in effect between the parties, CONTRACTOR may not disclose such information to any third party without prior written consent of ULA.

## **17. INFORMATION OF CONTRACTOR**

Unless there is a Confidentiality Agreement in effect between the parties, ULA personnel are not authorized to receive any information in confidence from CONTRACTOR. All communications of any kind from CONTRACTOR to ULA, accordingly, shall be deemed to be on a non-confidential basis unless CONTRACTOR and ULA have executed a Confidentiality Agreement protecting CONTRACTOR information. Except as otherwise agreed in writing between the parties, all specifications, information, data, drawings, software and other items supplied to ULA by CONTRACTOR shall be disclosed to ULA on a non-proprietary basis and may be used and/or disclosed by ULA without restriction.

## **18. INSPECTIONS, TESTS, AND ACCEPTANCE**

(a) The CONTRACTOR shall provide and maintain its inspection system in accordance with sound business practices and in compliance with any governmental regulations, and as may be otherwise provided in this Contract. The CONTRACTOR shall keep records of all inspections complete and available to ULA during the performance of this Contract and for six (6) years after final payment.

(b) All material and workmanship furnished by the CONTRACTOR, and its Subcontractors shall be subject to inspection, examination and testing by ULA during manufacture or construction and at any and all places where such manufacture or construction is carried on. ULA may also inspect the plant or plants of the CONTRACTOR or of any of its Subcontractors and Suppliers engaged in the performance of this Contract. The CONTRACTOR and its Subcontractors without additional charge, shall provide promptly all data, facilities, labor, materials, and assistance for ULA's inspectors' performance of their duties. The CONTRACTOR shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test shall relieve the CONTRACTOR from responsibility for defects or other failure to meet the requirements of this Contract.

(c) Should it be considered necessary or advisable by ULA at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the CONTRACTOR shall defray all the expenses of such examination and of satisfactory reconstruction.

(d) ULA shall have the right to reject defective material and workmanship or to require its replacement or correction. Rejected workmanship shall immediately be corrected and rejected material shall immediately be replaced with proper workmanship and/or proper material at CONTRACTOR's sole expense. The CONTRACTOR shall promptly segregate and remove the rejected material from the premises. If the CONTRACTOR fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, ULA may, at its sole discretion and without further Notice, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the CONTRACTOR the cost incurred by ULA in such replacement or correction; (ii) terminate this Contract for default, in accordance with the clause hereof titled "Termination for Default"; and/or (iii) require a reduction in price.

(e) When CONTRACTOR deems the Work finally complete, CONTRACTOR shall give ULA Notice as specified herein. After receipt of Notice, ULA will determine if the Work has been completed according to the terms of the Contract. If the Work is incomplete, ULA will give Notice to CONTRACTOR of the defects and/or omissions, and CONTRACTOR shall repeat the procedure stated herein until the Work has been accepted by ULA.

(f) Nothing contained in this clause shall in any way restrict ULA's rights under the clause hereof entitled "Warranty and Correction of Defects".

## **19. INSURANCE AND ENTRY ON ULA'S PROPERTY**

### **(a) CONTRACTOR'S REQUIRED LIABILITY INSURANCE**

- (1) Prior to the start of the Work, CONTRACTOR shall procure and maintain for the performance of this CONTRACT the following types of insurance, with coverage levels of at least those listed below, which shall remain in force continuously for

the entire period covered by the Contract, to protect CONTRACTOR from claims which may arise out of or result from the CONTRACTOR's 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:

(i) Worker's Compensation – Statutory benefits

(ii) Employers' Liability insurance

- a. Bodily Injury by Accident \$1,000,000 Each accident
- b. Bodily Injury by Disease \$1,000,000 Each employee

(iii) Business Automobile Liability Insurance

- a. Each accident or occurrence \$2,000,000

(iv) Commercial General Liability Insurance, covering Premises Liability, Contractual Liability, Products and Completed Operations and Personal Injury Liability. The policy shall not contain any exclusions directed toward any type of projects, materials, or processes involved in the Work.

- a. Each Occurrence \$2,000,000
- b. General Aggregate \$4,000,000
- c. Products/Completed Operations Aggregate \$4,000,000

- (2) Employers' Liability, Business Automobile Liability and Commercial General Liability coverage required under Subparagraph (a)(1) may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.
- (3) CONTRACTOR shall maintain in effect all insurance coverage required under Subparagraph (a)(1) with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and with an AM Best rating of A- or better. If CONTRACTOR fails to obtain or maintain any insurance coverage required under the Contract, ULA may purchase such coverage and charge the expense to CONTRACTOR, or terminate the Contract.
- (4) CONTRACTOR shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract, whichever is longer. Prior to commencement of the Work, the CONTRACTOR shall furnish ULA with certificates evidencing the required coverage.

#### (b) INSURANCE REQUIRED WHEN APPLICABLE

- (1) PROFESSIONAL LIABILITY INSURANCE: When the Work involves architectural, engineering (including landscape engineering), and/or surveying services, CONTRACTOR shall obtain professional liability insurance for claims arising from the negligent performance of professional services under the Contract, written for not less than \$5,000,000 per claim and in the aggregate with a deductible not to exceed \$500,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by CONTRACTOR. This coverage shall continue in effect for 10 year(s) after the Date of Substantial Completion, or until the expiration of the period of repose, whichever is shorter.
- (2) AIRCRAFT LIABILITY INSURANCE: If any aircraft is to be used in the performance of this work, (including owned and non-owned aircraft), aircraft liability insurance shall include the following minimum limits: (i) Bodily injury: \$10,000,000 each occurrence; \$2,000,000 each person (ii) Property Damage: \$10,000,000 each occurrence
- (3) POLLUTION LIABILITY INSURANCE: If the Work being performed involves abatement, removal, replacement, repair, enclosure, encapsulation, and/or disposal of any hazardous material or substance, coverage shall be provided on an occurrence basis with limits of \$5,000,000, and shall include coverage for liability to third parties for bodily injury, property damage, remediation, and clean-up costs arising from pollution events or conditions on, at, under, or migrating from the Site and from transportation and disposal of pollutants.

(c) UMBRELLA/EXCESS LIABILITY COVERAGE: CONTRACTOR shall purchase and maintain general liability excess coverage under Subparagraph (a)(1) with limits of \$25,000,000. The amounts of insurance required in subparagraph (a)(1) may be satisfied by

Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limit specified in this paragraph.

(d) Property Insurance

- (1) ULA shall maintain builders risk property insurance for the Work. Such insurance shall include CONTRACTOR and Subcontractors, and shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed by the parties.
- (2) In the event of a loss which requires ULA to satisfy all or any portion of the deductible or self-insured retention set forth in the builder's risk policy, ULA may, in its sole discretion, seek contribution toward such deductible or self-insured retention from any responsible Contractor or Subcontractor in an amount not to exceed \$1,000,000. The contribution shall not be included in the contract price.

(e) GENERAL REQUIREMENTS: The following requirements are applicable to all of the insurance coverages required under this Addendum, except to the extent otherwise indicated.

- (1) For any insurance required by this clause, insurance must be obtained through an insurer with a minimum AM Best rating of A- VII. Additionally, CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or material change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. At Contract inception and at each renewal/replacement thereafter, CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements and including this Contract number, to the Procurement Representative. Insurance maintained pursuant to this clause shall be considered primary as respects to the interest of ULA and is not contributory with any insurance which ULA may carry. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.
- (2) Additional Insureds. Except with regard to Professional Liability, and Workers' Compensation and Employer's Liability insurance, all insurance required by this Addendum shall name ULA as an additional insureds. Each such policy shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by ULA shall be called upon to contribute to a loss covered by insurance for the named insured.
- (3) Waiver of Subrogation. ULA and CONTRACTOR waive all rights against each other and any of their Subcontractors, consultants, separate contractors, 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 or other property insurance applicable to the Work (including without limitation property insurance obtained after completion of the Work), except such rights as they have to proceeds of such insurance held by ULA as fiduciary. ULA or CONTRACTOR, as appropriate, shall require of the consultants, separate contractors, if any, and the 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.
- (4) No Limitation. Nothing in this Addendum shall be construed as limiting in any way the extent to which CONTRACTOR or any Subcontractor may be held responsible for payment of damages resulting from their operations. CONTRACTOR's obligations to procure insurance are separate and independent of, and shall not limit CONTRACTOR's contractual indemnity and defense obligations.
- (5) Subcontract Agreements. CONTRACTOR shall ensure that its subcontractors maintain the coverages described in paragraph (a) of this clause at commercially reasonable amounts. CONTRACTOR shall flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this clause to all tiers of Subcontractors for all insurance required of such Subcontractors for the Work.

(f) CONTRACTOR and its Subcontractors shall comply with all site requirements.

(g) ULA shall not be responsible for damages to property or injuries or death to persons which may arise from or be attributable or incident to the condition or state of repair of the Site, or the use and occupation of them, or for damages to the property of

CONTRACTOR or the Government, or for damages to the property or injuries or death to the person of CONTRACTOR's officers, agents, servants or employees, or others who may be on the Site at the invitation of any one of them unless caused by the negligence of ULA or covered under policies of insurance provided by ULA.

(h) CONTRACTOR agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to CONTRACTOR's use of the Site, or the activities conducted by the CONTRACTOR under the Contract, provided that CONTRACTOR has acted or failed to act in a negligent manner. CONTRACTOR expressly waives all claims against ULA (except for claims arising from ULA's negligence or covered under policies of insurance provided by ULA under the Contract) for any such loss, damage, personal injury or death caused by or occurring as a consequence of such use of the Site or the conduct of activities or the performance of CONTRACTOR's responsibilities under the Contract. CONTRACTOR further agrees to indemnify, defend, save, and hold harmless ULA, the Government, and their respective officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of the CONTRACTOR's use of the Site or any activities conducted or services furnished in connection with or pursuant to the Contract, provided that CONTRACTOR has acted or failed to act in a negligent manner. The indemnity obligations in the preceding sentence do not extend to claims for damages caused by the gross negligence or willful misconduct of officers, agents or employees of the United States or to damages caused by the negligence of ULA. The Government and ULA will give CONTRACTOR reasonable notice of any claim against them covered by this indemnity after learning of it and cooperate with CONTRACTOR in the defense of any such claim.

## **20. MATERIAL AND WORKMANSHIP**

(a) Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the Work covered by the Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the CONTRACTOR may at its option, use any equipment, material, article, or process which, in the judgment of ULA is equal to that named. Approvals of equals will not relieve the CONTRACTOR of responsibility for adequate fulfillment of the various parts of the work, or from specified guarantees and maintenance standards. Any requests for substitution which may be offered shall have been submitted for approval prior to award of the Contract. Unless specified in the Schedule, no such substitution will be permitted and the CONTRACTOR will be deemed to have hereby agreed to furnish only the brand names specified in the Contract documents.

(b) No materials or supplies for the Work contracted for shall be purchased by the CONTRACTOR or by any Subcontractor working under CONTRACTOR which shall be subject to any chattel mortgage or under a conditional sale or other agreement in which an interest is retained by another party. The CONTRACTOR warrants that the title to all materials and supplies used by CONTRACTOR in the performance of the Work hereunder shall be clear of all encumbrances of any nature whatsoever.

(c) Unless waived in writing by ULA, all tests or trials shall be made in the presence of a duly authorized representative of ULA. When the presence of the inspector is waived, sworn statements, in triplicate, of the test made and results thereof shall be furnished to ULA by the CONTRACTOR immediately after the tests are made. Costs of all tests and trials, including concrete aggregate and cylinder tests, and soil analysis, shall be borne by the CONTRACTOR.

(d) All work under the Contract shall be performed in a skillful and workmanlike manner. ULA may, in writing, require the CONTRACTOR to remove from the site any employee ULA deems incompetent, careless, or otherwise objectionable. The CONTRACTOR shall additionally be responsible for requiring each employee engaged on the site to display such identification as may be approved and directed by ULA. All prescribed identification shall immediately be delivered to ULA, for cancellation, when such employee is no longer engaged on the site. When required by ULA, the CONTRACTOR shall also obtain and submit fingerprints of all persons employed or to be employed on the project.

## **21. NOTICE OF LABOR DISPUTES**

(a) Whenever the CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the performance of this Contract, the CONTRACTOR shall immediately give Notice thereof, including all relevant information with respect thereto, to the Procurement Representative.

(b) The CONTRACTOR agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of the Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify its next higher tier Subcontractor or ULA as the case may be, of all relevant information concerning such dispute.

## **22. OPERATIONS, STORAGE AREAS AND TEMPORARY CONSTRUCTION FACILITIES**

(a) All operations of the CONTRACTOR (including storage of materials) upon ULA premises shall be confined to areas authorized or approved in advance by ULA. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon ULA premises. Premises adjacent to the Site may be made available for use by the CONTRACTOR without cost whenever such use will not interfere with other contractors' uses or purposes. The CONTRACTOR shall be liable for any and all damages caused by CONTRACTOR to ULA premises. The CONTRACTOR and its Subcontractors shall hold and save harmless ULA, its officers, employees and agents, from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third parties.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the advance approval of ULA and shall be built with labor and materials furnished by the CONTRACTOR without expense to ULA. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the Work.

(c) The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized in advance by ULA. When it is necessary to cross curbing or sidewalks, the CONTRACTOR shall provide protection against damage. Any roads, curbing, or sidewalks damaged by CONTRACTOR or Subcontractors shall be repaired by and at the expense of the CONTRACTOR, to ULA's satisfaction.

(d) The CONTRACTOR shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all applicable federal, state and local sanitary regulations and shall be located as approved in advance by ULA.

(e) The Work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with other CONTRACTORS of ULA and ULA employees as may be required by ULA. The CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other CONTRACTORS or ULA employees, whether at the Site or not.

(f) Temporary construction facilities and any connections to utilities shall be removed by and at the sole expense of the CONTRACTOR. The site occupied by such facilities and connections shall be restored to a condition satisfactory to ULA.

## **23. PATENT INDEMNITY AND NOTICE OF INFRINGEMENT**

(a) CONTRACTOR hereby agrees to indemnify and save harmless ULA, its officers, employees, customers, assigns, and others claiming under ULA from liability from any actual or alleged patent, copyright, trademark or trade secret infringement by reason of any manufacture, use, or sale of any items delivered by CONTRACTOR under this Contract, or for any items manufacturable from reports, drawings, blueprints, data, or technical information delivered by CONTRACTOR under this Contract. Such liability shall include, but is not limited to damages, costs, attorney's fees, and expenses.

(b) The CONTRACTOR shall report to ULA promptly and in reasonable written detail, each Notice or claim of patent infringement, based on the performance of this Contract, of which the CONTRACTOR has knowledge.

(c) In the event of any suit against ULA, or any claim against ULA made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the CONTRACTOR shall furnish to ULA, upon request, all evidence and information in possession of the CONTRACTOR pertaining to such suit or claim.

## **24. PAYMENTS**

(a) ULA shall pay the Contract price as provided in this Contract.

(b) ULA will make progress payments monthly as the Work progresses, based on estimates of acceptable Work accomplished submitted by the CONTRACTOR and approved by ULA. If requested by ULA, the CONTRACTOR shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In preparing estimates of Work accomplished, the material delivered on the Site and preparatory work completed may be taken into consideration. Such payments shall be made on submission of itemized requests by the CONTRACTOR and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the CONTRACTOR.

(c) In making such progress payments there shall be retained, unless otherwise required or limited by applicable law, ten (10) percent of the approved estimated amount until final completion and acceptance of all Work covered by the Contract; provided, that upon

completion and acceptance of each building, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

(d) All material and Work covered by progress payments made shall thereupon become the sole property of ULA but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of ULA to require the fulfillment of all of the terms of the Contract.

(e) Upon completion and final acceptance of all Work required hereunder as provided in the clause herein entitled "Inspection, Test, and Acceptance", the amount due the CONTRACTOR under this Contract will be paid upon the presentation of a properly executed and duly certified voucher therefore and presentation of release of all Claims against ULA arising by virtue of this Contract, other than Claims, in stated amounts, that the CONTRACTOR has specifically excepted from the operation of the release. If the CONTRACTOR's Claim to amounts payable under the Contract has been assigned, a release may be required of the assignee at the option of ULA.

(f) Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to ULA complete releases from itself and each of its Subcontractors of all liens arising out of this Contract, or receipts in full in lieu thereof, and, an affidavit that so far as it has knowledge or information the release includes all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to ULA, to indemnify ULA against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to ULA all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

(g) The obligation of ULA to make the payments required under the provisions of this Contract shall, in the discretion of ULA, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any Claims which ULA may have against the CONTRACTOR under or in connection with this Contract. Any overpayments to the CONTRACTOR shall, unless otherwise adjusted, be repaid to ULA upon demand.

(h) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. When taxable and non-taxable items are invoiced under this Contract, taxable versus non-taxable items shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

## **25. PRECEDENCE**

(a) Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and/or Task Order, Release document, the schedule of this Contract, (which shall include continuation sheets), as applicable, and/or any special terms and conditions; (2) Terms and Conditions, including this Document; (3) Statement of Work; (4) Specifications; (5) Drawings; and (6) any other exhibits to this Contract

(b) The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment, and transportation required for the proper execution of the Work.

## **26. PRESERVATION OF EXISTING VEGETATION**

(a) The CONTRACTOR will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site which do not unreasonably interfere with the construction as may be determined by ULA. The CONTRACTOR will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

(b) Care shall be taken by the CONTRACTOR in felling trees authorized for removal to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations shall be trimmed with a clean cut and painted with an approved tree pruning compound. The CONTRACTOR may be required to replace or restore, at its own expense, all vegetation not protected and preserved as required herein that is destroyed or damaged.

(c) The Site may contain protected species and their habitat. CONTRACTOR shall take particular care to preserve and protect any such protected species and their habitat. CONTRACTOR shall not disturb the habitat of any protected species, nor shall CONTRACTOR make contact with or feed any wildlife present on Site.

## **27. PROTECTION OF MATERIALS AND WORK PERFORMED**

(a) The CONTRACTOR shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be ULA furnished or owned) and all Work performed. The CONTRACTOR shall promptly comply with requests of ULA to enclose or specially protect such property. If as determined by the Procurement Representative, material, equipment, supplies and Work performed are not adequately protected by the CONTRACTOR, ULA may protect such property and the cost thereof may be charged to the CONTRACTOR or deducted from any payments due the CONTRACTOR.

(b) Any damage to existing structure or work of any kind or the interruption of a utility service, shall be repaired or restored immediately by and at the expense of the CONTRACTOR.

(c) The necessary materials, tools and equipment to be utilized in the performance of this Contract shall be consigned to and delivered to or by the CONTRACTOR at the site and shall be CONTRACTOR's responsibility to unload and safeguard from all hazards.

(d) The CONTRACTOR shall protect the materials and Work from deterioration and damage during construction and shall store and secure flammable material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the Work. CONTRACTOR shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

## **28. RECORDS**

(a) CONTRACTOR shall maintain complete and accurate records relating to its performance of the Work to substantiate that CONTRACTOR performed all tasks required by the Contract. CONTRACTOR shall maintain all financial and quality records pertaining to its performance of the Work. CONTRACTOR shall retain such records for six (6) years from final payment of this Contract.

(b) ULA shall have access to such records, and any other records CONTRACTOR is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained

(c) CONTRACTOR shall require the substance of this section to be included in any agreement with Subcontractors.

## **29. RELEASE OF INFORMATION**

(a) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by CONTRACTOR or any Subcontractor at any tier without the prior written approval of ULA.

## **30. REMOVAL OF EQUIPMENT AND CLEANUP**

(a) The CONTRACTOR shall at all times keep the Site, including storage areas, free from accumulations of waste material and rubbish. Prior to completion of the Work, CONTRACTOR shall remove any rubbish from the Site. Upon completion of the construction, the CONTRACTOR shall remove all tools, scaffolding equipment, and materials not the property of ULA and leave the Site in a broom clean, neat condition satisfactory to ULA.

(b) Should the CONTRACTOR fail to take prompt action to remove its equipment, tools, materials, and other articles from the site, ULA (at its option and without waiver of such other rights as it may have) may, thirty (30) days after Notice to CONTRACTOR, treat such items as abandoned property and thereby take title to, or dispose or use them as it deems appropriate.

## **31. OWNERSHIP, REPRODUCTION, AND USE OF DOCUMENTS AND INTELLECTUAL PROPERTY**

(a) All Foreground Intellectual Property Made by or for CONTRACTOR, either alone or with others, in the performance of the Contract will be (i) the exclusive property of ULA, (ii) delivered to ULA promptly upon request, and (iii) protected as the property and proprietary, confidential, and/or trade secret of ULA and used only in accordance with the Information of ULA clause.

(b) CONTRACTOR will (i) promptly disclose in writing all inventions conceived, developed or first reduced to practice in the performance of the Contract to ULA and (ii) execute all papers, cooperate with ULA and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of ULA.

(c) To the extent permitted under United States or foreign copyright law, all works of authorship, including documents, drawings, test data, software, software documentation, photographs, videotapes, sound recordings and images, created by or for CONTRACTOR, either alone or with others in the performance of the Contract, will be works made for hire, with the copyrights therein vesting in ULA. The copyrights in all other such works that fall under this paragraph, including the exclusive rights therein, will be promptly transferred and formally assigned free of charge to ULA.

(d) CONTRACTOR grants to ULA, and to ULA's customers and Subcontractors, an irrevocable, nonexclusive, royalty-free, fully paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to

the extent that such Background Intellectual Property of CONTRACTOR is necessary to facilitate ULA's or ULA's customers', Subcontractors', or suppliers' use or enjoyment of the Work being delivered under the Contract or the Foreground Intellectual Property.

(e) CONTRACTOR warrants that the Intellectual Property and/or Work performed or delivered under the Contract will not infringe or otherwise violate the Intellectual Property rights of any third party.

(f) CONTRACTOR shall indemnify, defend and hold harmless ULA, its customers, agents, employees, and Subcontractors from and against any loss, damage or liability including attorney's fees and costs, based on a claim of infringement or misappropriation of any third party's Intellectual Property rights by the Work or Intellectual Property performed or delivered hereunder. ULA shall notify CONTRACTOR promptly of any such claim and, at CONTRACTOR's option and expense, shall provide to CONTRACTOR reasonable and necessary information, assistance (at C CONTRACTOR's expense) and authority to defend or settle said claim. If required by ULA, CONTRACTOR shall provide proof of having sufficient resources or insurance to support this indemnification obligation. In case any Work or Intellectual Property provided hereunder in any suit is held to constitute a violation of such third party's Intellectual Property rights and its use is enjoined, CONTRACTOR shall at its option and expense (i) procure for ULA the right to continue using the Work and/or Intellectual Property, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work and/or Intellectual Property that is non-infringing and acceptable to ULA. CONTRACTOR shall not have any liability for infringement or misappropriation if the alleged infringement or misappropriation would not have occurred except for ULA's unauthorized modification of the Work and/or Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property. Any limitation of liability in this Contract shall not apply to this paragraph.

(g) CONTRACTOR'S USE OF DOCUMENTS: CONTRACTOR is expressly prohibited from using documents prepared by it pursuant to the Contract in its practice for other clients, and acknowledges that such documents contain competition sensitive, proprietary information of ULA and its customers relating to the design and functionality of the systems depicted in such documents.

(h) CONTRACTOR shall obtain from its Subcontractors and consultants rights and rights of use that correspond to the rights given by CONTRACTOR to ULA in the Contract, and the CONTRACTOR shall provide evidence that such rights have been secured.

## **32. SAFETY AND ACCIDENT PREVENTION**

(a) In performing Work under this Contract on ULA property, the CONTRACTOR is responsible for the safety and health of the CONTRACTOR'S, and Subcontractors' employees, and shall:

- (1) Conform to all safety requirements contained in this Contract and comply with all local, state and federal health and safety regulations;
- (2) Comply with the safety rules of ULA and federal and state regulatory authorities that concern related activities not directly addressed in this Contract;
- (3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of all individuals performing the Work or in any way involved with the performance of this Contract;
- (4) Take such additional immediate precautions as ULA may reasonably require for safety and accident prevention purposes; and
- (5) Be responsible for informing all CONTRACTOR and Subcontractor employees of any hazards associated with the job site.

(b) The Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract.

(c) The CONTRACTOR shall immediately notify ULA of any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease, or contamination of property, or property loss of \$10,000 or more, arising out of Work performed under this Contract; provided, however, the CONTRACTOR will not be required to include in any report an expression of opinion as to fault or negligence. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish ULA with a report, in such form as ULA may require, of the investigative findings, together with proposed and/or completed corrective actions.



(d) Any violation of these safety rules and requirements, unless immediately corrected as directed by the Procurement Representative, shall be a material default and shall be grounds for termination of this Contract in accordance with the "Termination for Default" clause of this Contract.

(e) CONTRACTOR shall be responsible for and hereby agrees to indemnify and save ULA harmless from any and all:

(1) damage to the property of ULA, the CONTRACTOR, or Subcontractors; or

(2) injury to employees of ULA, the CONTRACTOR, or Subcontractors; or

(3) for any liability whatsoever arising out of or in connection with the presence of CONTRACTOR or its Subcontractors pursuant to the Contract.

(f) The CONTRACTOR shall cause the substance of this clause including this paragraph (f) and any applicable Contract Provisions to be inserted in Subcontracts which: (i) amount to \$1,000,000 or more unless ULA makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the CONTRACTOR, regardless of dollar amount, determines that hazardous materials or operations are involved.

### **33. SITE INVESTIGATIONS AND REPRESENTATIONS**

(a) The CONTRACTOR represents that it has investigated and satisfied itself as to the nature and location of the Work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the Site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the performance of the Work, and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract.

(b) The CONTRACTOR further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by ULA, as well as from information presented by the Specifications and Drawings.

**(c) ULA expressly disclaims the accuracy and reliability of any subsurface tests and/or representations provided with the Bid Documents. Said materials are provided for illustrative purposes only, and CONTRACTOR is required to make and has made its own independent tests of subsurface conditions.**

(d) Failure by the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. ULA assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by ULA or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefore is assumed by ULA.

(e) Where alterations of and/or additions to existing construction are required under this Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions that may affect its Work and shall be responsible for the accuracy of such dimensions and determinations.

### **34. SPECIFICATIONS AND DRAWINGS**

(a) CONTRACTOR shall comply with all Specifications and Drawings set forth in the Statement of Work hereof. All Work called for in said Specifications and Drawings shall be accomplished in accordance with all applicable national and local codes.

(b) The CONTRACTOR shall keep on the Site a copy of the Specifications and Drawings and shall at all times provide ULA access thereto. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Specifications and Drawings, the Specifications shall govern. In any case of discrepancy either in the figures, in the Specifications, or in the Drawings, the matter shall be promptly submitted to the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by the CONTRACTOR without this determination shall be at its own risk and expense. ULA shall furnish from time to time such detail Drawings and other information as may be considered necessary, unless otherwise provided.

(c) Omissions and Misdemeanors. Omissions from the Specifications or Drawings or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Specifications and Drawings, shall not relieve the CONTRACTOR from performing

such omitted or misdescribed details of Work, but they shall be performed as if fully and correctly set forth and described in the Specifications and Drawings.

(d) Checking of Drawings and Dimensions. The CONTRACTOR shall check all drawings furnished it immediately upon their receipt and shall promptly provide Notice to ULA of any discrepancies. Dimensions marked on Drawings shall in general be followed in preference to scale measurements. Large-scale detail Drawings shall in general govern small scale Drawings. The CONTRACTOR shall compare all Drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the Drawings.

(e) Deviations. Deviations from the Drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from ULA.

(f) Base Lines and Grades. The CONTRACTOR shall lay out its work from base lines and grades established by ULA and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The CONTRACTOR will be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by ULA, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by ULA. ULA will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the conduct of the Work.

(g) All Drawings shall become the property of ULA, and ULA shall be entitled, without further payment or liability to the CONTRACTOR and without further permission, to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to ULA under any patent or shall not be construed as affecting the scope of any license otherwise granted to ULA under any patent.

(h) The CONTRACTOR shall furnish to ULA for all phases of the Work under Specification sections wherein they apply, a sufficient number of submittals so that ULA can retain copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. This information shall be submitted for approval within ten (10) days, in accordance with the Construction Schedule, after award of the Contract. Submittals returned by ULA shall be marked with one of the following notations: (i) NO EXCEPTIONS TAKEN, UNLESS OTHERWISE NOTED; (ii) MAKE CORRECTIONS NOTED; (iii) REVISE AND RESUBMIT; (iv) REJECTED; (v) SUBMIT SPECIFIED ITEM. Marking Submittals as "NO EXCEPTIONS TAKEN, UNLESS OTHERWISE NOTED" does not constitute a waiver of detailed or specified requirements unless so stated in writing by ULA. Submittals bearing ULA's review comments of "MAKE CORRECTIONS NOTED", "REVISE AND RESUBMIT", "SUBMIT SPECIFIED ITEM", or "REJECTED" shall be corrected and resubmitted within seven (7) calendar days to comply with the requirements of the review comments and the design documents. All submittals shall be marked as "NO EXCEPTIONS TAKEN" before starting fabrication.

(i) ULA's review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed Work in strict conformance with the Contract requirements. ULA will not assume the responsibility for searching out deviations in the CONTRACTOR's submittals or any Specifications indicated by the CONTRACTOR on submittals. It is understood that the review and/or approval by ULA of the CONTRACTOR's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such review and/or approvals shall in no way relieve the CONTRACTOR of responsibility for any error or deficiency which may exist in the submittal, as the CONTRACTOR shall be responsible for meeting all requirements of the Contract.

(j) In the event the Work set forth in the specifications and drawings does not comply with requirements within the applicable national or local codes, the CONTRACTOR shall notify ULA of such fact and ULA may, by issuing a Change Order in accordance with the provisions of the Changes clause hereof, authorize compliance by the CONTRACTOR with the requirements of the applicable national or local codes.

(k) The CONTRACTOR shall provide to ULA one (1) set of Drawings that accurately portray "as-built" conditions of all construction items within the Contract. Each of these Drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the Work from that indicated or specified is permitted by subsequent modification to the Contract, such choices or variations shall be reflected on these Drawings. The as-built Drawings shall include such supplementary

notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built Drawings will be delivered to ULA within four (4) weeks after completion of construction.

(l) The CONTRACTOR acknowledges that the Specifications and Drawings are owned solely by ULA and acknowledges that they contain confidential, proprietary and trade secret information. CONTRACTOR agrees to maintain the confidentiality of these documents so far as is possible within the scope of the Work as provided for in the Contract Documents. CONTRACTOR will not at any time provide any of the Contract documents to any person or entity that is not a Subcontractor on an employee or officer of a Subcontractor. CONTRACTOR shall include the substance of this paragraph in all agreements with Subcontractors.

### **35. SUBCONTRACTORS**

(a) The CONTRACTOR shall at all times select qualified vendors and Subcontractors for performance of all Subcontract work and the furnishing of materials and labor. Nothing noted in any Subcontract hereunder shall create any contractual relation between any Subcontractor and ULA. The Contract shall not be nullified, in whole or in part, by any Subcontract.

(b) CONTRACTOR shall keep all invoices for labor, materials, tools, services, etc., incurred in connection with this Contract on a current basis, and if required by ULA, shall present evidence that payment therefore has been made.

(c) Unless otherwise stated in the Contract or the bidding requirements, the CONTRACTOR, as soon as practicable after award of the Contract, shall furnish in writing to ULA through the Procurement Representative 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 Procurement Representative will promptly reply to the CONTRACTOR stating whether or not ULA has any objection to any such proposed person or entity.

(d) The CONTRACTOR shall not contract with a proposed person or entity to whom ULA has made objection. The CONTRACTOR shall not change a Subcontractor, person or entity previously selected without Procurement Representative prior approval to such substitution. The CONTRACTOR shall not retain any Subcontractor to whom ULA has a reasonable and timely objection, provided that ULA agrees to compensate the CONTRACTOR for any additional costs incurred by the CONTRACTOR as a result of such objection pursuant to the changes clause and upon provision of sufficient cost and other data supporting CONTRACTOR's claim.

(e) If the Contract is terminated, ULA reserves the right to require that any subcontract be assigned by CONTRACTOR to ULA or its designee, subject to the prior rights of any surety.

### **36. SUPERINTENDENCE**

(a) The CONTRACTOR shall provide a competent Superintendent, with necessary assistants, sufficient and competent management and supervisory personnel on the Site during performance of any Work. Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of the Contract. If such personnel become unacceptable, ULA will present the reasons for dissatisfaction to the CONTRACTOR in writing whereby the CONTRACTOR shall take immediate steps to replace such person(s).

(b) The Superintendent is subject to acceptance by ULA and subject to the continuing satisfaction of ULA. If such personnel become unacceptable to ULA, at ULA's sole discretion, the CONTRACTOR shall take immediate steps to replace such person(s). Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of the Contract.

(c) The Superintendent shall represent the CONTRACTOR, and communications including Notices, delivered to the Superintendent shall be deemed delivered to the CONTRACTOR.

(d) CONTRACTOR superintendence and/or management at the Site shall have the authority to commit the CONTRACTOR to Changes under the Changes clause of this Contract. Upon acceptance of the Contract, CONTRACTOR shall provide the Procurement Representative with Notice as to personnel designated under this provision, and such authority shall remain in force until Notice otherwise is received by the Procurement Representative.

### **37. SURVIVABILITY**

If the Contract is terminated for default or convenience, CONTRACTOR shall not be relieved of those obligations contained in the Contract for the following provisions:

Acceptance, Merger and Severability  
Applicable Laws  
Claims and Disputes  
Compliance with Laws

Export Control  
Independent CONTRACTOR Relationship  
Information of ULA  
Insurance and Entry onto ULA Property  
Maintenance of Records  
Ownership, Reproduction, and Use Of Documents And Intellectual Property  
Patent Indemnity and Notice Of Infringement  
Reproduction and Use Of Technical Data  
Release of Information  
Warranty and Correction Of Defects

### **38. SUSPENSION OF WORK**

(a) The Procurement Representative may order the CONTRACTOR in writing to suspend all or any part of the Work of this Contract for such period of time as ULA may determine to be appropriate for the convenience of ULA. If, without the fault or negligence of the CONTRACTOR, the performance of all or any part of the Work is suspended for greater than 30 days, or such shorter time as the parties may agree in writing, CONTRACTOR may request an adjustment be made by ULA for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the CONTRACTOR would have been prevented by other causes even if the Work had not been so suspended. Any Claim must be asserted to the Procurement Representative in writing within twenty-four (24) hours after the termination of the suspension and a proposal for adjustment must be submitted to the Procurement Representative in writing within twenty (20) days after the termination of suspension and must fully set forth the requested adjustment in the Contract Price and/or adjustment in the Contract Construction Schedule, if any. If an adjustment in the Contract Construction Schedule period of performance is requested, the proposal for adjustment shall also separately set forth the time required, including premium time, to maintain the present period of performance.

(b) In the event the CONTRACTOR is instructed to vacate an area where Work is being performed, the Construction Schedule will be extended by the time lost. If the CONTRACTOR is ordered to vacate for more than one hour at any one time, then the CONTRACTOR will make every reasonable effort to place his labor force in other productive work. If no other work is available, upon receipt request for equitable adjustment acceptable to ULA, ULA will reimburse the CONTRACTOR for the labor cost (without mark-up) of the time lost in excess of one hour per man, but in no event more than fifteen (15) hours per man. If the CONTRACTOR is required to vacate an area for more than sixteen (16) normal working hours the provisions of subparagraph (a) above shall apply in lieu of this paragraph.

### **39. TERMINATION FOR CONVENIENCE**

(a) ULA may terminate part or all of this Contract for its convenience by Notice to CONTRACTOR. ULA's only obligation shall be to pay CONTRACTOR a percentage of the price reflecting the percentage of the Work performed prior to the Notice of termination, plus reasonable charges that CONTRACTOR can demonstrate to the satisfaction of ULA, using generally accepted accounting principles, which have resulted from the termination. CONTRACTOR shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

(b) In no event shall ULA be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract Price. CONTRACTOR's termination claim shall be submitted within thirty (30) days from the effective date of the termination.

(c) CONTRACTOR shall continue all Work not terminated.

### **40. TERMINATION FOR DEFAULT**

(a) Time is of the essence of this Contract.

(b) If the CONTRACTOR refuses or fails (i) to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or (ii) fails to complete such Work in said time, or (iii) fails to perform any other requirement under this Contract, ULA may, by Notice to the CONTRACTOR, terminate this Contract in whole or in part. ULA's right to terminate this Contract under subdivisions (b)(i) and (b)(iii) above may be exercised if the CONTRACTOR does not cure such failure within ten (10) days (or more if authorized in writing by the Procurement Representative) after receipt of Notice from ULA specifying the failure. ULA's right to terminate the Contract under subdivision (b)(ii) is not subject to cure. Any Notice of termination pursuant to subdivision (b)(ii) is effective upon receipt by CONTRACTOR.

(c) In the event ULA terminates this Contract in whole or in part, ULA may take over the Work and complete it, by contract or otherwise, and may take possession of and use any materials, appliances and plant on the Site necessary for completing the Work. However, the CONTRACTOR shall continue the Work not terminated. The CONTRACTOR and its sureties shall be liable for any damage to ULA resulting from the CONTRACTOR's refusal or failure to complete the Work within the Contract Construction Schedule, whether or not the CONTRACTOR's right to proceed with the Work is terminated. This liability includes any excess costs incurred by ULA in completing the Work; and, if specified in the Construction Schedule of this Contract, liquidated damages for each calendar day of delay until the Work is finally accepted.

(d) The right of the CONTRACTOR to proceed shall not be terminated, nor the CONTRACTOR charged with damages under this clause, if the delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; and delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and such Subcontractors or Suppliers; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, Notify ULA of the cause of delay.

(e) If, after Notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the Parties shall be the same as if the Notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

(f) If this Contract is terminated for default, ULA may require the CONTRACTOR to transfer title and deliver to ULA any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the CONTRACTOR has specifically produced or acquired for the terminated portion of this Contract. Upon direction of ULA, the CONTRACTOR shall also protect and preserve property in its possession in which ULA has an interest.

(g) Failure of ULA to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of ULA in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **41. TRAVEL COSTS**

CONTRACTOR travel expenses shall be reimbursed by ULA for expenses that are authorized under this Contract and approved by the ULA designated Project Manager in advance of the requested travel. Travel reimbursement shall be in accordance with the GSA per diem guidelines as established on the GSA website at <http://www.gsa.gov/>. ULA shall not reimburse any of the following travel expenses: alcohol, entertainment, telephone bills, airfare other than coach airfare, rental cars larger than midsize, laundry or per diem expenses that exceed GSA per diem rates unless approved in advance by the ULA designated Project Manager. Any travel expenses that exceed per diem rates must be approved in advance under the 300% per diem rule by the ULA designated Project Manager. To be eligible for reimbursement, copies of travel expense receipts \$75 or greater must be submitted with invoices for payment. Reimbursement shall be for actual and reasonable expenses only without any markup rate.

CONTRACTOR shall have the option to establish lump sum travel amounts provided that they are established in accordance with this provision and approved by ULA.

#### **42. USE OF STRUCTURE BEFORE ACCEPTANCE**

(a) ULA or others approved by ULA may, during the performance of the Work, enter the structure for the purpose of performing any necessary Work. In doing so ULA shall endeavor not to interfere with the CONTRACTOR and the CONTRACTOR shall not interfere work being done by or on behalf of ULA.

(b) If, prior to completion and final acceptance of the Work, ULA takes possession of any structure (whether completed or otherwise) comprising a portion of the Work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the CONTRACTOR), then, while ULA is in possession, the CONTRACTOR, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to structure other than that resulting from the CONTRACTOR's fault or negligence. Such taking of possession by ULA shall not relieve the CONTRACTOR from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

#### **43. WAIVER, APPROVAL, AND REMEDIES**

(a) Failure by ULA to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provision or provisions, or as a waiver of the right of ULA thereafter to enforce each and every such provision.

(b) ULA's approval of the CONTRACTOR's design or material shall not relieve the CONTRACTOR of any warranties or of any other requirements of this Contract; nor shall waiver by ULA of any drawings or specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered under this Contract unless so stated by ULA in writing. The provisions of this clause shall not limit or affect the rights of ULA under the clause entitled "Inspection, Tests, and Acceptance".

(c) The rights and remedies of ULA in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

#### **44. WARRANTY AND CORRECTION OF DEFECTS**

(a) In addition to any other warranties in this Contract, and in addition to the warranties provided in paragraph (h) of this clause, the CONTRACTOR warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defects in equipment, material, or design furnished, or workmanship performed by the CONTRACTOR or any Subcontractor, material supplier or manufacturer.

(b) This warranty shall continue for a minimum of two (2) years from the date of final acceptance of the entire Work, unless otherwise stated in the Contract.

(c) The CONTRACTOR shall remedy, at the CONTRACTOR's expense, any failure to conform or any defect in the Work. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR's expense, any damage to ULA owned or controlled real or personal property, when that damage is the result of:

- (1) The CONTRACTOR's failure to conform to Contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The CONTRACTOR shall restore any Work damaged in fulfilling the terms and conditions of this clause. The CONTRACTOR's warranty with respect to work repaired or replaced will run for two (2) years from the date of repair or replacement.

(e) ULA shall provide Notice to the CONTRACTOR, within a reasonable time after discovery, of any failure, defect, or damage.

(f) If the CONTRACTOR fails to remedy any failure, defect, or damage within a reasonable time after receipt of Notice, ULA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the CONTRACTOR's expense.

(g) With respect to all warranties, express or implied, from Subcontractors, material suppliers, or manufacturers for Work performed and materials furnished under this Contract, the CONTRACTOR shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of ULA; and
- (3) Enforce all warranties for the benefit of ULA.

(h) All Subcontractor, material and/or manufacturer warranties shall inure to the benefit of ULA and its assigns.

(i) This warranty shall not limit ULA's rights under the Contract with respect to latent defects, gross mistakes, or fraud.

(j) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of ULA.