

**EXH. RJR-8C
DOCKETS UE-22___/UG-22___
2022 PSE GENERAL RATE CASE
WITNESS: RONALD J. ROBERTS**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-22___
Docket UG-22___**

**SEVENTH EXHIBIT (CONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF**

RONALD J. ROBERTS

ON BEHALF OF PUGET SOUND ENERGY

REDACTED VERSION

JANUARY 31, 2022



CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



Phase III

ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT

Between

Puget Sound Energy, Inc.

and

CBI Services, Inc.

for the **Tacoma LNG**

Facility in

Tacoma, Washington

_____, **2016**

SHADED INFORMATION IS
DESIGNATED AS CONFIDENTIAL PER
WAC 480-07-160



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6	Attach B.2.b.2	Overall Plot Plan - TOTE Dock	186512-000-PI-01-000002	C	6/16/2015
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7	Attach B.2.c.1	Control Building Plan	186512-000-CA-24-905001	C	4/1/2015
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17	Attach B.2.e.2	LNG Tank Layout and Concept	186512-000-PI-08-010201	D	5/11/2015
18	Attach B.2.e.3	LNG Tank Concrete Wall Elevation - Option 1 - Tapered Wall W/O Corbel	186512-000-SP-01-030001	B	7/28/2015
19	Attach B.2.e.4	LNG Tank Foundation Lower Slab	186512-000-SP-01-030201	B	7/29/2015
20	Attach B.2.e.5	LNG Tank Foundation Upper Slab	186512-000-SP-01-030501	D	7/29/2015
21	Attach B.2.e.6	LNG Tank Foundation Isolator Layout	186512-000-SP-01-030901	B	7/29/2015
22	Attach B.2.f	NGL Storage Plan	186512-000-CV-08-405001	D	5/6/2015
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23	Attach B.2.g.1	CCTV Layout	186512-000-TE-02-000001	B	3/25/2015
24	Attach B.2.g.2	Plant Access Layout	186512-000-TE-02-000002	B	3/25/2015
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38	Attach B.4.b	Major Equipment List	186512-000-PR-LS-00001	D	9/15/2015
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49	Attach B.6.c.2	One Line Diagram Legend, Symbols & Notes - Sheet 2	186512-000-EL-20-200001	A	6/7/2013
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56	Attach B.6.c.9	One Line Diagram 480V Motor Control Center MCC-20	186512-000-EL-20-200132	B	3/18/2015
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82	Attach B.7.t	LNG In-Tank Pumps	186512-000-PR-03-040101	C	3/20/2015

Last Revised: 13-Oct-16

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83	Attach B.7.u	LNG In-Tank Pump Distribution	186512-000-PR-03-040102	C	3/20/2015
84	Attach B.7.v	Hylebos Loading (Future)	186512-000-PR-03-040103	B	2/27/2015
85	Attach B.7.w	LNG EX-Tank Boost Pumps	186512-000-PR-03-040201	C	5/26/2015
86	Attach B.7.x	LNG Vaporizer	186512-000-PR-03-040202	C	5/26/2015
87	Attach B.7.y	LNG Vaporizer E-402	186512-000-PR-03-040203	B	2/27/2015
88	Attach B.7.z	Tote Bunkering Interconnection	186512-000-PR-03-040301	D	5/26/2015
89	Attach B.7.aa	Tote Bunkering - Blair Dock	186512-000-PR-03-040302	C	5/26/2015
90	Attach B.7.bb	LNG Truck Loading	186512-000-PR-03-040401	C	3/20/2015
91	Attach B.7.cc	WPG Cooling System	186512-000-PR-03-050101	C	3/20/2015
92	Attach B.7.dd	Deminerlized Water System	186512-000-PR-03-055101	C	5/26/2015
93	Attach B.7.ee	Firewater Pump (Future)	186512-000-PR-03-057101	C	5/26/2015
94	Attach B.7.ff	Firewater System	186512-000-PR-03-057102	D	5/26/2015
95	Attach B.7.gg	Instrument Air System	186512-000-PR-03-060101	C	5/26/2015
96	Attach B.7.hh	Instrument Air Distribution	186512-000-PR-03-060102	B	3/6/2015
97	Attach B.7.ii	Clean Agent Fire Suppression	186512-000-PR-03-064101	B	3/6/2015
98	Attach B.7.jj	Nitrogen System	186512-000-PR-03-070101	B	3/6/2015
99	Attach B.7.kk	Hazard Detection System	186512-000-PR-03-072101	D	5/26/2015
100	Attach B.7.ll	Misc. Systems	186512-000-PR-03-073101	C	3/20/2015
101	Attach B.7.mm	Fuel Gas System	186512-000-PR-03-080101	C	9/14/2015
102	Attach B.7.nn	NGL Storage and Loading	186512-000-PR-03-080201	C	9/14/2015
103	Attach B.7.oo	Sump Pumps	186512-000-PR-03-085101	D	5/26/2015
104	Attach B.7.pp	Chromatograph System	186512-000-PR-03-087101	C	3/20/2015
105	Attach B.7.qq	Essential Generator	186512-000-PR-03-098101	B	3/6/2015
106	Attach B.7.rr	Power System Monitoring	186512-000-PR-03-098501	B	3/6/2015
	Attach B.8	Fire Protection System Evaluation			
107	Attach B.8.a	Fire Protection System Evaluation Report	N/A	C	7/13/2015
108	Attach B.8.b	Thermal Exclusion Zones (with Hylebos Dock)	186512-000-SE-01-000011	D	7/15/2015
109	Attach B.8.c	Firewater System Layout - Main LNG Facility	186512-000-PI-01-002030	C	7/15/2015
110	Attach B.8.d	Firewater System Layout - TOTE Dock	186512-000-PI-01-002031	C	6/29/2015
111	Attach B.8.e	Firewater System Monitor Coverage	186512-000-PI-01-002033	D	7/15/2015
112	Attach B.8.f	Dry Chemical Equipment Location and Coverage	186512-000-PI-01-002032	C	7/15/2015
113	Attach B.8.g	Fire and Gas Detection Layout - Main LNG Plant	186512-000-IC-05-000001	C	6/24/2015
114	Attach B.8.h	Fire and Gas Detection Layout - Blair (TOTE) Dock	186512-000-IC-05-000002	B	6/24/2015
115	Attach B.8.i	Spill Containment Plan - Main Plant	186512-000-CV-08-000101	C	7/15/2015
116	Attach B.8.j	Spill Containment Plan - Blair (TOTE) Dock	186512-000-CV-08-000102	B	6/29/2015
117	Attach B.8.k	Spill Containment Plan - Hylebos Dock (Future)	186512-000-CV-08-000103	C	7/15/2015

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Item #	Contract Attach #	Doc Descrip.	Doc. Ref No.	Rev No.	Last Revised Date
118	Attach B.8.l	Hazardous Area Plan - Main Plant	186512-000-EL-10-000001	C	6/25/2015
119	Attach B.8.m	Area Classification Details	186512-000-EL-10-000002	B	6/25/2015
120	Attach B.8.n	Area Classification Details	186512-000-EL-10-000003	A	6/7/2013
121	Attach B.8.o	Hazardous Area Plan - With Blair (TOTE) Dock	186512-000-EL-10-000004	B	6/25/2015
Attachment C: Project Schedule					
122	Attach C.1	Overview		2	10-13-2016
123	Attach C.2	Bar Chart		2	10-13-2016
Attachment D: Performance Guarantee/Performance Test Procedures					
124	Attach D.1	Performance Guarantees	186512-PM-PW-000011	1	7/1/2015
Attachment E: Work Execution Plan					
125	Attach E.1	Work Execution Plan	186512-ES-PW-00PEP0	3	5/30/2015
Attachment F: Safety Plan					
126	Attach F.1	Safety Introduction	N/A	2	7-20-2016
127	Attach F.2	CB&I Corporate HSE Policy	CMS-710-00-FM-00003		2-4-2016
128	Attach F.3	CB&I Safety Results	N/A	0	
129	Attach F.4	Health, Safety, and Environmental Management	CMS-710-00-PR-00001	10	6-13-2016
Attachment G: Quality Assurance Plan					
130	Attach G.1	Quality Introduction		1	5/29/2015
131	Attach G.2	CB&I Steel Plate Structures North America Operations Quality Policy Declaration (Part 1 of 3)	CMS-720-00-PL-51010.0001	2	3/19/2014
132	Attach G.3	Quality Policy Declaration - CB&I Steel Plate Structures North America Operations (Part 2 of 3)	CMS-720-00-PL-51010.0002	N/A	5/29/2013
133	Attach G.4	Quality Manual for Steel Plate Structures - North America (Part 3 of 3)	CMS-720-00-PL-51010.0003	4	7/1/2015
Attachment H: Milestone Payment Schedule					
134	Attach H.1	Milestone Payment Schedule		2	10-12-2016
Attachment I: Work Scope Responsibility Matrix					
135	Attach I.1	Work Scope Responsibility Matrix	186512-SP-GE-000014	4	7-20-2016
Attachment J:					
		Early Marine Loading Arm Release - Special Conditions		1	8-10-2016
		Overview, details and conditions			
Attach K: Mutual Confidentiality and Non-Disclosure Agreement					
136	Attach K.1	Non-Disclosure Agreement	186512-PM-PW-000019	0	
Attachment L: Contract Forms					
	Attach L.1	Change Orders			
137	Attach L.1.a	Change Form	CMS-740-00-FM-31311	0	11/10/2008
	Attach L.2	Punchlist			
138	Attach L.2.a	System Master Punch List Report	CMS-720-02-FM-11401	0	3/31/2011
	Attach L.3	Completion Certificates			
139	Attach L.3.a	Form for Mechanical Completion Certificate	N/A	N/A	10/29/2015

Contract Attachments Master Index

Item #	Contract Attach #	Doc Descr.	Doc. Ref No.	Rev No.	Last Revised Date
140	Attach L.3.b	Form for Substantial Completion Certificate	N/A	N/A	10/29/2015
141	Attach L.3.c	Form for Final Completion Certificate	N/A	N/A	10/29/2015
	Attach L.4	Lien Waivers			
142	Attach L.4.a	Conditional Waiver and Release on Progress Payment	N/A	N/A	10/29/2015
143	Attach L.4.b	Final Waiver of Lien Document	N/A	N/A	10/29/2015
	Attach L.5	Ready for Start-Up of the Unit Letter			
144	Attach L.5.a	Start-up of Unit Letter (RFSU)	CMS-810-00-FM-00005	0	3/31/2009
	Attachment M: Performance and Payment Guarantee by Contractor Guarantor				
145	Attach M.1	Parent Company Guarantee	N/A	1	7-20-2016
	Attachment N: Contract Price				
146	Attach N.1	Contract Price	N/A	N/A	10-3-2016
	Attachment O: Cost				
147	Attach O.1	Cost	N/A	1	7-20-2016
	Attachment P: Contract Updates				
	Attach P.1	Overview	N/A	0	7-20-2016
	Attach P.2	Change Log P-1	N/A	0	7-20-2016

This ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT, dated as of _____, 2016 (this "Agreement"), is entered into by and between Puget Sound Energy, Inc. ("Owner"), and CBI Services, Inc. ("Contractor"); each of Owner and Contractor sometimes referred to in this Agreement individually a "Party" and, collectively, the "Parties".

WITNESSETH:

WHEREAS, Owner desires to obtain, and Contractor desires to provide, engineering, procurement, and construction related services to complete the Tacoma LNG Facility to be located near Tacoma, Washington, on a date certain, lump sum basis for the Contract Price (as defined below), and in accordance with the terms and conditions herein specified;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: DESCRIPTION OF CONTRACT; DEFINITIONS & INTERPRETATION

- 1.1 Documents Included** This Agreement consists of Articles 1 through 30 and the Attachments listed in the Table of Attachments which are specifically incorporated herein and made a part hereof by reference.
- 1.2 Entire Agreement** This Agreement, as defined in Section 1.1, sets forth the full and complete understanding of the Parties as of the date first above stated, and supersedes any and all agreements and representations of the Parties, written or oral, made or dated prior thereto with respect to the subject matter of this Agreement.
- 1.3 Contract Modifications** Subsequent to the date hereof, this Agreement may be supplemented and amended only by mutual agreement of the Parties in writing.
- 1.4 Definitions** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Acceptance Tests" shall have the meaning set forth in Attachment D.

"Acceptance Test Procedures" shall have the meaning set forth in Attachment D.

"Affiliate" means, with respect to any entity, another entity controlled by, controlling, or under common control with, such entity. As used in this definition, the terms "control", "controlled by" or "under common control with" shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such entity or the power to direct the management or policies of such entity, whether by operation of law, by contract or otherwise.

"Base Rate" means the rate of interest set forth in Section 13.4.

"Business Day" means any day excluding Saturday, Sunday and any other day which is a legal United States holiday.

"Certificate Acceptance Date" means the date on which Owner accepts a Completion Certificate or such certificate is deemed accepted as provided in Section 12.1.

"Certificate Receipt Date" means the date on which Owner receives a Completion Certificate that subsequently is accepted by Owner or deemed accepted as provided in Section 12.1.

"Change in Law" shall mean any change in the judicial or administrative interpretation or adoption by any Governmental Authority of any Law (excluding any Law relating to the organization, existence, good standing, qualification, or licensing of Contractor or its Subcontractors in any jurisdiction), which (i) is materially inconsistent or materially at variance with any Law in effect on the Effective Date or will require Contractor to pay Taxes (excluding Taxes on income, net worth, gross receipts or revenue, assets, franchise, or existence of Contractor or its Subcontractors) in addition to those that are in effect on the Effective Date and included in the Contract Price; or (ii) imposes any material condition or material requirement (except for any such conditions or requirements which result from the acts or omissions of Contractor or any Subcontractor) not required as of the Effective Date affecting the requirements, issuance, renewal, or extension of any Governmental Approval (excluding any Governmental Approval relating to the organization, existence, good standing, qualification, or licensing of Contractor or any Subcontractor in any jurisdiction and excluding any condition or requirement which on the Effective Date is generally a condition or requirement of such Governmental Approval).

"Change Order" shall have the meaning set forth in Section 9.3.6.

"Claim" shall have the meaning set forth in Section 29.1.

"Completion Certificate" means a Mechanical Completion Certificate, Substantial Completion Certificate, or a Final Completion Certificate, as applicable.

"Confidential Information" shall have the meaning set forth in Attachment K.

"Construction Change Directive" shall have the meaning set forth in Section 9.6.

"Constructive Change Order" shall have the meaning set forth in Section 9.4.

"Contractor" means CBI Services, Inc.

"Contractor Guarantor" shall mean Chicago Bridge & Iron Company N.V. as guarantor of Contractor's payment and performance under this Agreement in accordance with Attachment M.

"Contractor Hazmats" shall have the meaning set forth in Section 4.21.2.

"Contractor's Construction Equipment" shall mean equipment owned, leased, borrowed or rented by the Contractor or a Subcontractor of any tier for use during the performance of the Work and not to be incorporated into the Work.

"Contract Price" means the total price to be paid by Owner to Contractor for the Work pursuant to this Agreement as more specifically set forth in Section 13.1, as the same may be adjusted in accordance with Article 9.

"Cost" shall have the meaning given in Attachment O.

"Cost Records" shall have the meaning given in Section 4.22.2.

"Defects" means any design, engineering, Equipment, tools, Materials, Supplies, installations or performance which (i) is not in compliance with or conformity to this Agreement, (ii) is of improper or inferior workmanship, or (iii) would adversely affect either the performance of the Facility in accordance with the Performance Guarantees during the Acceptance Test for such Performance Guarantee, the capability of the Facility to be operated in accordance with the Operating Manual, or the capability of the Facility to be operated in accordance with this Agreement.

"Delay Liquidated Damages" shall have the meaning set forth in Section 14.3.1.

"Detailed Design Preparation" shall have the meaning given in Section 4.12.2.

"Effective Date" means the date of this Agreement first written above.

"EPC" means Engineering, Procurement and Construction.

"Equipment" means all equipment, apparatus, machinery, parts, and special maintenance tools to be incorporated into the Work, but does not include Contractor's Construction Equipment.

"Event of Contractor Default" shall have the meaning set forth in Section 16.2.

"Event of Force Majeure" shall have the meaning set forth in Section 15.1.

"Event of Owner Default" shall have the meaning set forth in Section 16.4.

"Extended Warranty Period" shall have the meaning set forth in Section 8.1.3.

"Facility" shall mean the treatment system, liquefier, liquefied natural gas (LNG) storage tank, power generator, vaporizer, truck loading, marine loading and ancillary systems, related Equipment as appropriate at the Site, and all other Equipment and construction required by this Agreement.

"Feed Stock" shall have the meaning and composition as set forth in Attachment B, Section 3.

"Feed Stock Ready Date" shall have the meaning set forth in Section 12.2.3.

"Feed Stock Supply Date" shall have the meaning set forth in Section 12.2.3.

"Feed Stock Supply Period" shall have the meaning set forth in Section 12.2.3.

"Final Completion" shall have the meaning set forth in Section 12.5.2.

"Final Completion Certificate" means, with respect to the Facility, a certificate issued by Contractor in the form of the Certificate included in Attachment L, certifying the occurrence of each condition precedent to Final Completion of the Facility, set forth in Section 12.5.1.

"Final Payment" means the final installment payment of the Contract Price pursuant to the Milestone Payment Schedule.

"Final Request for Payment" shall have the meaning set forth in Section 13.2.2.

"Force Majeure" shall have the meaning set forth in Article 15.

"GAAP" means generally accepted accounting principles in United States.

"General Warranty Period" shall have the meaning set forth in Section 8.1.2.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, tariff, certification, exemption, filing, variance, order, judgment, decree, declaration or publication of, notices to, or registration by or with any Governmental Authority relating to (i) the design, engineering, procurement, construction, Start-up, testing, or completion of the Facility, or (ii) the operation of the Facility prior to the Substantial Completion Date of the Facility.

"Governmental Authority" means any national, district, or other governmental department, ministry, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, and any arbitral tribunal. The Port of Tacoma is not a Governmental Authority for the purposes of this definition.

"Guaranteed Completion Date" shall have the meaning set forth in Section 10.1.2.

"Hazardous Material" means any material deemed hazardous under the Law, and may include industrial or solid waste, hazardous waste, hazardous or toxic substances, chemicals or pollutants, hydrocarbons, including crude oil, natural gas, natural gas liquids, or liquefied natural gas, and any wastes associated with the exploration and production of hydrocarbons, asbestos or any substance containing asbestos and deemed hazardous, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, effluents, contaminants, emissions or related materials and any items or substances included in the definition of hazardous, dangerous or toxic waste, materials or substances under any Law relating to the environment.

"Indemnified Party" shall have the meaning set forth in Section 28.1.

"Indemnified Persons" shall have the meaning set forth in Section 19.3.

"ISBL" means inside battery limits.

"Key Personnel" means the Project Manager and the other personnel named in Attachment E.

"Labor Dispute" shall have the meaning set forth in Section 21.2.

"Law" means any and all treaties, acts, statutes, laws, codes, standards, regulations, permits, ordinances, rules, judgments, orders, decrees, directives, or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing, by any Government Authority as may be in effect from time to time, including the environmental guidelines and all applicable anti-corruption, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws, including the U.S. Foreign Corrupt Practices Act.

"Loss" shall have the meaning set forth in Section 28.1.

"Major Subcontractor" means a "Subcontractor" identified by Contractor within seven (7) days of execution of its subcontract with subcontract price that is more than 5% of the "Contract Price".

"Major Supplier" means "Supplier" identified by Contractor within seven (7) days of execution of its contract with a contract price that is more than 5% of the "Contract Price".

"Materials and Supplies" means all materials and supplies of any kind to be incorporated into the Facility that are required for the construction, completion, Start-up, testing, or operation of the Facility in accordance with this Agreement.

"Mechanical Completion" shall have the meaning set forth in Section 12.2.

"Mechanical Completion Certificate" means a certificate issued by Contractor in the form of the Certificate included in Attachment L certifying the occurrence of each condition precedent to Mechanical Completion set forth in Section 12.2.

"Mechanical Completion Date" means the Certificate Acceptance Date for Mechanical Completion as set forth in Section 12.2.1.

"Milestones" shall have the meaning set forth in Section 13.2.1.

"Milestone Payment Schedule" shall have the meaning set forth in Section 13.2.1.

"Notice of Termination" shall have the meaning set forth in Section 16.1.

"Notice to Proceed" shall have the meaning set forth in Section 5.1.1.

"Operating Manual" shall have the meaning set forth in Section 4.12.5.

"OSBL" means outside battery limits.

"OSHA" means the U.S. Occupational Safety and Health Administration.

"Owner" means Puget Sound Energy.

"Owner Delay" means (i) any interruption or delay of all or any portion of the Work at a time when Contractor is and continues to be willing and able to perform such Work caused by an act by Owner, or an omission to act by Owner as required under this Agreement (other than the act or omission to act of Owner or its agents, employees or representatives acting in accordance with this Agreement or Contractor's instructions), (ii) a delay as described in Section 3.10, Section 4.17.3, Section 6.2.1 or Section 12.2.3 or (iii) any material failure of Owner to perform any of its obligations under this Agreement in a timely manner. An Owner Delay is subject to an equitable adjustment through the Change Order procedures set forth in Article 9 only to the extent specified in this Agreement.

"Owner Risks" shall have the meaning set forth in Section 9.3.2.

"Owner's Representative" means the individual or individuals designated by Owner in accordance with Section 3.3 to serve as Owner's point of contact with Contractor on all matters pertaining to this Agreement.

"Owner Site Risks" shall have the meaning set forth in Section 4.16.3.

"Performance Guarantees" shall have the meaning set forth in Section 14.1.

"Performance Liquidated Damages" shall have the meaning set forth in Section 14.2.

"Person" means any individual, corporation, company, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority, or other entity recognized under law.

"Project" means the design, engineering, procurement, construction, Start-up, testing, and completion of the Facility.

"Project Manager" means the individual designated by Contractor in accordance with Section 4.4.2 to be its single point of contact with Owner on all matters pertaining to this Agreement.

"Project Schedule" means Contractor's schedule for performance of the Work through Final Completion as set forth in Attachment C.

"Punchlist" means the list of Work which remains to be completed after satisfaction of all requirements for Completion of the Facility, which list shall include only those items of Work, such as final painting and cleanup, (i) that do not preclude the Facility or any portion thereof from operating or functioning as designed and intended to operate, and (ii) the absence of which would not create any occupational, safety, security, or environmental hazard, and would not result in violation of any applicable Law.

"Punchlist Items" means each of the items identified in a Punchlist.

"Purchase Order" means any agreement whereby a "Supplier" undertakes (i) to perform or provide any portion of the Work, or (ii) to provide all or a portion of the Equipment or Materials and Supplies required by any Person performing or providing any portion of the Work.

"Quality Assurance / Quality Control" shall have the meaning set forth in Section 6.1.

"Relied Upon Information" shall have the meaning set forth in Section 4.7 and listed in Attachment B, Section 3.

"Regular Operating Personnel" shall have the meaning set forth in Section 4.10.

"Request for Payment" shall have the meaning set forth in Section 13.3.

"Replacement Contractor" shall have the meaning set forth in Section 16.3.2.

"Site" means those areas where Contractor has control for purposes of construction of the Facility.

"Start-up" means the preparation and execution of all activities (other than the activities to be performed by Owner under the express provisions of this Agreement) required to place the Facility in operation in a safe and workmanlike manner in compliance with the standards set forth in this Agreement.

"Subcontract" means any agreement whereby a Subcontractor undertakes (i) to perform or provide any portion of the Work, or (ii) to provide all or a portion of the Equipment or Materials and Supplies required by any Person performing or providing any portion of the Work.

"Subcontractor" means (i) any Person other than Contractor performing or providing any portion of the Work, whether hired directly by Contractor or by a Person hired by Contractor and including every tier of subcontractors, sub-subcontractors and so forth, and (ii) any Person providing or supplying all or a portion of the Equipment or Materials and Supplies required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the Facility, including any materialman or vendor.

"Substantial Completion" shall have the meaning set forth in Section 12.3.2.

"Substantial Completion Certificate" means a certificate issued by Contractor in the form of the Certificate included in Attachment L certifying the occurrence of each condition precedent to Substantial Completion set forth in Section 12.3.1.

"Substantial Completion Date" means the Certificate Acceptance Date for Substantial Completion as set forth in Section 12.3.2, as applicable.

"Suspension Notice" shall have the meaning set forth in Section 11.1.

"Suspension Period" shall have the meaning set forth in Section 11.1.

"Supplier" means "Subcontractor" without performing construction or installation Work at the project Site. "Supplier" may perform technical or commissioning services at the project Site.

"Taxes" means any and all license, documentation, recording and registration fees, and all taxes (including income, gross receipts or revenue, sales, use, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imposts, duties (including customs duties), assessments, fees, charges, and withholdings of any nature whatsoever, whether or not presently in existence, together with any penalties, fines, additions to tax, or interest thereon, imposed by any Governmental Authority.

"Temporary Construction Facilities" shall have the meaning set forth in Section 4.5.2.

"Time and Materials Basis" means the method of calculating the amount for compensating Contractor for Change Orders on a time and materials basis described in Section 9.3.4.

"Warranty" shall have the meaning set forth in Section 8.1.1.

"Warranty Period" shall have the meaning set forth in Section 8.1.3.

"WISHA" shall mean the Washington Industrial Safety and Health Act of 1973.

"Work" means (a) the Facility (in whatever stage of completion), including all Equipment and Materials and Supplies to be incorporated therein, and (b) all other acts, services, and things required for the design, procurement, engineering, construction, Start-up, testing and completion of the Facility to Final Completion and for the performance of Contractor's Warranty obligations hereunder, including: (i) obtaining, or assisting Owner in obtaining, all Governmental Approvals, (ii) procurement and handling of Materials and Supplies, (iii) Start-up and testing, (iv) correction of Defects prior to Substantial Completion, and (v) supply and installation of the Equipment and the Work shall also include all other acts, services, and things required to design, engineer, procure and construct a complete and fully operational Facility in accordance with the requirements of this Agreement, in a safe and workmanlike manner and in compliance with all applicable Laws, with the sole exception of the responsibilities of Owner described in Article 3.

1.5 Conflicting Provisions

- 1.5.1. In the event of any conflict between Articles 1 through 30 of this Agreement and any Exhibit, Attachment, or Schedule hereto, the terms and provisions of Articles 1 through 30 of this Agreement shall control.
- 1.5.2. In the event Contractor becomes aware of any conflict between Articles 1 through 30 of this Agreement and the Exhibits, Attachments or Schedules hereto, Contractor shall notify Owner of such conflict in writing.

1.6 Interpretation

- 1.6.1 The headings and titles in this Agreement shall not be deemed to be a part thereof or be taken into consideration in the interpretation or construction of this Agreement.
- 1.6.2 Words importing persons or parties shall include firms, corporations and any organizations having legal capacity. Words importing the singular only shall also include the plural and vice versa where the context requires.
- 1.6.3 Unless the context otherwise requires, any reference to a document shall mean such document as amended, supplemented or otherwise modified and in effect from time to time.
- 1.6.4 Unless otherwise stated, any reference to a Person shall include its successors and permitted assigns, and any reference to a Governmental Authority shall include any entity succeeding to its functions.
- 1.6.5 Unless the context otherwise requires, reference herein to Articles, Sections, Attachments or Exhibits are to Articles, Sections, Attachments or Exhibits of this Agreement.
- 1.6.6 Unless the context otherwise requires, the word "or" is not exclusive.
- 1.6.7 Unless the context otherwise requires, the words "include", "includes", and "including" shall be deemed to be followed by the phrase, "without limitation".

ARTICLE 2: GENERAL PROVISIONS

2.1 Contract

Owner hereby engages Contractor to perform the Work and to supply and complete the Facility on the dates certain specified in this Agreement, on a lump sum basis for the Contract Price and in accordance with this Agreement, and Contractor hereby accepts such engagement. Notwithstanding any other provision hereof, the Parties agree that this Agreement is a lump sum contract and

Contractor's obligation is to provide Owner with a fully operational Facility, for the Contract Price, designed, engineered, procured, constructed and completed in accordance with the terms of this Agreement. Owner is relying upon the expertise of Contractor to furnish a completed Facility in accordance with the terms of this Agreement, and Contractor acknowledges Owner's reliance thereupon.

2.2 Relationship of Owner and Contractor

2.2.1 Independent Contractor.

(a) General. Contractor is an independent contractor and nothing contained herein shall be construed as creating (i) any relationship between Owner and Contractor other than that of owner and independent contractor, or (ii) any relationship whatsoever between Owner and Contractor's employees or Subcontractors. Neither Contractor, nor any of its employees, are or shall be deemed to be partners, agents, or employees of Owner.

(b) Contractor Employees. Subject to Section 4.4 and Article 21, Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees.

(c) Responsibility for Subcontractors, Etc. Contractor accepts complete responsibility for the acts of its agents, employees, Subcontractors, Suppliers and all others it hires or engages to perform or assist in the performance of the Work. Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier. No subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with this Agreement or from its responsibility for the performance of any other of its obligations under this Agreement. Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower-tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship.

2.2.2 Owner Not Responsible for Acts of Contractor. Owner shall not be responsible for Contractor's failure to carry out the Work in accordance with this Agreement. Owner shall not be responsible for and will not have control over or charge of means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work. Owner will not be responsible for or have control over the acts or omissions of Contractor, any Subcontractor, or any of their agents or employees, or any other Persons performing any portion of the Work or providing or supplying any of the Equipment. No inspection, or failure to inspect, by Owner shall be a waiver of Contractor's obligations under this Agreement, or be construed as approval or acceptance of the Work or any part thereof.

2.3 General Oversight

2.3.1 Owner's Access to Site. Owner and Owner's Representatives at all reasonable times shall have access to the Work wherever it is in preparation and progress, consistent with Contractor's safety requirements. Contractor shall afford Owner with access to the Site (i) during normal work hours of each day, and (ii) any time Contractor is performing Work, during each stage of construction, Start-up and testing of the Facility at the Site. Owner may maintain a staff at the Site to monitor the progress and quality of the Work, to determine whether the Work is proceeding in accordance with this Agreement and to make such tests and inspections as Owner deems appropriate, provided that such access and inspection shall not adversely impact the schedule. Inspections that are required by Law or the Agreement shall not be considered to be an impact upon the Project schedule. The presence of Owner at the Site shall not in any manner be construed as assurance that the Work is being completed in compliance with this Agreement, nor as evidence that any requirement of this Agreement of any kind, including notice, has been met or waived. Owner will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since

these are solely Contractor's rights and responsibilities under this Agreement.

- 2.3.2 Owner Review of Documents. Upon Owner's request, Contractor shall afford Owner the opportunity to review and comment on any draft Subcontracts or Equipment selection recommendations. Owner will provide any comments within ten (10) Business Days after the date of receipt of any such requested draft Subcontracts or Equipment selection recommendations. Failure to do so within such period shall be deemed acceptance of the selection. Contractor agrees to consider in good faith any and all comments made by Owner. Review or comment by Owner (or its failure to do so) with respect to any draft Subcontracts or Equipment selection recommendations shall not in any way affect or reduce Contractor's obligations under this Agreement with respect to the Work or in any way affect the Contract Price. If comments result in changes in the Work, such changes shall be made only in accordance with the Change Order procedures and provisions of Article 9.
- 2.3.3 Emergency Situations. Whenever Owner determines that an emergency situation exists, or may exist, affecting the safety or security of individuals at the Facility or at or near the Site, or endangering any part of the Facility, Work or other property located at or near the Site, or the environment, Owner shall have the right to occupy and control the Site and to modify any aspect of the Work, if necessary. To the extent such occupation and control of the Site or modification of the Work has a material impact on the Contract Price, the Project Schedule or the Guaranteed Completion Date, and to the extent the emergency is not caused or exacerbated by any acts or omissions of Contractor or by its default under this Agreement, the Contract Price, Project Schedule and Guaranteed Completion Date, as applicable, shall be an Owner Delay subject to an equitable adjustment through the Change Order procedures set forth in Article 9.
- 2.3.4 Participation of Others. At Owner's request, Contractor shall furnish to Governmental Authorities or the Port of Tacoma or their respective representatives a copy of notices, reports, and other documents given to Owner hereunder, and upon advance written request, permit such Persons or their representatives to observe or participate in any meetings, tests, reviews, inspections, monitoring, or other similar activities to the extent such rights are available to Owner hereunder. Owner shall bind such parties to the same confidentiality obligations that Owner is bound to with respect to such items.

ARTICLE 3: RESPONSIBILITIES OF OWNER

3.1 Access to Site

Owner shall provide to Contractor, through the access road(s) contemplated by Section 4.5.12, reasonable non-exclusive rights of ingress and egress to and from the Site, to the construction Site, to the utility easements to the Site, to the construction laydown and office areas, and labor accommodation areas for Contractor and all Subcontractors for performance of the Work, all consistent with the rules and regulations of the Port of Tacoma. The Site shall be available for performance of Contractor's Work on and after the Effective Date, and shall be available at such times as is reasonably necessary for the performance of all aspects of the Work effective on the date the Notice to Proceed is delivered pursuant to Section 5.1.

3.2 Tie-Points

Without limiting the provisions of Section 4.5.3 and Section 4.8, Owner shall provide the tie-point locations required for the Start-up, testing and operation of the Facility, as set forth in the drawings of tie-point locations. Owner shall be responsible for ensuring that those systems to which tie-ins must be made are rendered safe for such tie-in operation.

3.3 Designation of Representatives

Within ten (10) Business Days of the Effective Date, Owner shall designate an individual or individuals acting as Owner's Representative as a point of contact for Contractor with respect to the prosecution of

the Work. Owner's Representative shall be authorized to act, and administer this Agreement, on behalf of Owner, to agree upon procedures for coordinating Owner's efforts with those of Contractor and to furnish information, when appropriate, to Contractor; provided, that no amendment or modification of this Agreement shall be effected except by an amendment to this Agreement as set forth in Section 1.3 or a Change Order, as the case may be. Owner may, in its sole discretion, replace, increase or decrease Owner's Representative(s) at any time upon giving notice of such replacement to Contractor.

3.4 Governmental Approvals

Owner shall obtain and maintain in effect through Final Completion (if required under Applicable Law or required for Contractor to perform the Work) those Governmental Approvals to be obtained by Owner as specified in Attachments A & B. Contractor acknowledges that Owner has provided Contractor, in Attachments A & B, with copies of Governmental Approvals acquired for the Facility. Owner shall otherwise provide reasonable cooperation and assistance to Contractor in obtaining the Governmental Approvals for which Contractor is responsible under Section 4.3.

3.5 Utilities

Owner shall provide interconnection points for all water, electricity, telecommunications, sanitary sewer, and wastewater disposal services necessary for Contractor's Temporary Construction Facilities in accordance with Attachment E during the period from commencement of the Work through Final Completion.

3.6 Regular Operating Personnel

Owner shall timely provide, or cause to be provided, Regular Operating Personnel for training in accordance with Section 4.10 and shall provide a regular complement of Regular Operating Personnel continuously thereafter through Substantial Completion.

3.7 Cooperation in Design Detail

Owner shall assist and cooperate with Contractor, and shall provide such information to Contractor, in a timely manner and in good faith, as Contractor reasonably may request in connection with the Detailed Design Preparation.

3.8 No Default

For avoidance of doubt, if Owner fails or omits to provide any of the services, or to take any of the other actions, described in this Article 3 or in Article 4, or unreasonably acts or fails to act or delays action with respect thereto, such failure, omission, or delay shall not constitute a breach or default by Owner under this Agreement, and Owner shall have no liability to Contractor in connection therewith, but rather such failure, omission, or delay shall be an Owner Delay to the extent such failure, omission, or delay reasonably causes Contractor to be unable to perform the Work in a timely manner in accordance with this Agreement. Contractor promptly shall notify Owner of any such failure, omission, or delay and, without limiting the provisions of Article 9, Contractor diligently shall seek to perform such Work notwithstanding such failure, omission, or delay, unless otherwise directed by Owner.

ARTICLE 4: RESPONSIBILITIES OF CONTRACTOR

4.1 Work

4.1.1 General. Contractor shall perform the Work in a good and workmanlike manner, and in accordance with sound engineering, construction and project management practices; all Governmental Approvals and other applicable Law; applicable industry codes and standards; and all requirements of this Agreement. Contractor further covenants to Owner that the Work

when complete shall comply with the requirements of this Section 4.1.1.

- 4.1.2 Contractor's General Covenants. Without limiting the generality of Section 4.1.1, Contractor covenants to Owner that it shall:
- (a) at all times exercise the skill, care and diligence in the carrying out and completion of the Work as should be exercised by a contractor fully skilled and experienced in the carrying out of work similar to the Work and have the resources, experience, qualifications and capabilities as are required fully to perform its obligations under this Agreement; and
 - (b) provide Equipment and Materials and Supplies that will be new, of good quality and in conformance with the plans and specifications.
- 4.1.3 To the extent any breach by Contractor of any of its obligations under Section 4.1.1 or Section 4.1.2 prior to the Substantial Completion Date also constitutes a breach of the Warranty, Owner shall afford Contractor a reasonable opportunity to perform remedial work as contemplated by Section 8.3; provided, that no action by Owner or Contractor contemplated by this Section 4.1.3, and no failure so to act, shall be deemed to limit any obligation of Contractor, or to constitute a waiver of any right or remedy of Owner, under this Agreement.
- 4.1.4 The provisions of Section 4.1.2(b) shall not apply to any used Equipment or Materials and Supplies that are provided by Owner and that are re-used or tied into by Contractor or its Subcontractors, in connection with the Work.

4.2 Project Planning and Control

- 4.2.1 Project Schedule. In addition to the Project Schedule attached hereto as Attachment C, Contractor shall, in accordance with the requirements included in Attachment E, prepare a detailed schedule for the performance of the Work using the "critical path management" method (the "**Project Schedule**") and provide the same in native electronic form and hard-copy to Owner for its review and comment as soon as reasonably practical but in no event later than sixty days (60) after Contract Award. Owner agrees to provide any such comments to Contractor within twenty (20) Business Days of receipt of such schedule from Contractor, and Contractor agrees to consider in good faith any and all comments made by Owner. Owner's review or comment on such schedule (or its failure to do so) shall not in any way constitute approval of the Project Schedule or affect or reduce Contractor's obligations to complete the Work in a timely manner in accordance with this Agreement and the Project Schedule. Contractor shall update and provide to Owner the Project Schedule whenever there is a delay to the critical path and from time to time in accordance with Article 9 and Article 10. Contractor also shall, in consultation with Owner, update the Project Schedule to reflect the progress of the Work and changes to the Project Schedule and whenever circumstances change in such a manner so as to affect the dates for testing and completion of the Facility.
- 4.2.2 Performance of Work in Accordance with the Project Schedule. Subject to Section 14.4, Contractor shall use all commercially reasonable efforts to prosecute the Work in accordance with or in advance of the Project Schedule. Contractor shall not be liable for any delay, disruption, hindrance, interference, constructive acceleration, losses, damages or costs resulting from Owner-required changes in scope (except for approved Change Orders) or any cause beyond its reasonable control (including but not limited to subsurface conditions and obstructions and Changes in Law), and, to the extent such delay is caused by or the responsibility of Owner, the Project Schedule and Contract Price shall be equitably adjusted for same before Contractor shall be required to proceed with the Work. To the extent such delay is caused by or the responsibility of Contractor, neither the Project Schedule, the Guaranteed Completion Date, nor the Contract Price will be equitably adjusted. To the extent such delay is caused by or the responsibility of neither Owner nor Contractor, such delay shall be deemed a Force Majeure Event and shall be subject to the provisions of Article 15 hereof.

4.3 Governmental Approvals

- 4.3.1 Contractor shall obtain, or cause its Subcontractors to obtain and pay for, all Governmental Approvals to be obtained by Contractor or its Subcontractors as specified in Attachments A & B necessary for the execution of the Work by Contractor and its Subcontractors including for construction of the Temporary Construction Facilities, excluding any Governmental Approvals required to be obtained by Owner as owner and operator of the Facility as described in Section 3.4 or as specified in Attachments A & B. Contractor shall keep Owner informed of the progress made with respect to obtaining such Governmental Approvals. Owner reserves the right to take over efforts to obtain such Governmental Approvals at any time and either Party shall provide assistance to the other as may be reasonably requested in obtaining their respective Governmental Approvals. Contractor shall also be responsible for coordinating with Government Authorities, test laboratories and any other Person, as necessary, for the administration of any testing or of other action necessary to demonstrate the Facility's compliance with all applicable Laws.
- 4.3.2 Contractor shall provide reasonable support to Owner's prosecution of any pending application for a Governmental Approval by, among other things, providing all necessary engineering and other data associated with Contractor's performance of the Work hereunder and as required by Owner to obtain such Governmental Approvals. Contractor shall perform the Work in compliance with all of the terms and conditions of each of the foregoing Governmental Approvals.
- 4.3.3 Notwithstanding the foregoing provisions of this Section 4.3, Contractor shall be responsible for all damages, fines, and penalties which may arise (including those that Owner pays or becomes liable to pay) as a result of Contractor's noncompliance with applicable Laws or Governmental Approvals arising from or in relation to Contractor's or any Subcontractor's performance of the Work other than any damages, fines or penalties to the extent arising from the negligence or willful misconduct of Owner or its agents or contractors other than Contractor.
- 4.3.4 Not Used.
- 4.3.5 The Parties acknowledge and agree that, pursuant to applicable Law, certain Governmental Authorities may have lawful governmental authority to issue a stop-work order to Owner or Contractor. Contractor shall notify Owner immediately upon receipt of any communication with respect to any actual or potential stop-work order and of any fact or circumstance that reasonably could be expected to lead to a stop-work order, and shall cooperate with Owner and such Governmental Authorities to resolve the situation promptly in accordance with this Agreement and applicable Law. A stop-work order, or similar exercise of lawful governmental authority by a Governmental Authority caused by Contractor shall not be deemed a Change Order. No such stop-work order, or similar exercise of lawful governmental authority by a Governmental Authority shall be deemed by itself to be a Change in Law or an Event of Force Majeure, or result in a Change Order, except to the extent it meets the definition thereof set forth herein and satisfies the other applicable provisions of this Agreement.
- 4.3.6 Contractor shall not, except in emergencies or as otherwise required by this Agreement or applicable Law, communicate directly with such Governmental Authorities, but shall cooperate with Owner as Owner may request with respect to such communications.

4.4 Personnel and Qualifications

- 4.4.1 General. Contractor shall provide all labor and personnel required for the proper performance of the Work. Contractor acknowledges that it has investigated and is satisfied with the availability, and productivity of such labor and personnel. All personnel used by Contractor in the performance of the Work shall be qualified by training, licenses or certifications, as required, and experienced to perform their assigned tasks. Contractor shall not use, or permit any Subcontractor to use, in the performance of the Work any personnel reasonably deemed to be unfit, incompetent, careless or unqualified to perform the Work assigned to such Person. The Contractor shall enforce strict discipline and good order among the Contractor's

employees and other persons carrying out the Work, including observance of badging, drug testing, smoking, tobacco, alcohol, parking, safety, weapons and other rules governing the conduct of personnel at the Site.

- 4.4.2 Project Manager. Subject to Owner's prior approval, Contractor shall designate a single individual (the "**Project Manager**") who will have full responsibility for the prosecution of the Work and full authority to act on behalf of and bind Contractor with respect to this Agreement. The Project Manager shall have full authority to represent Contractor and to acknowledge (solely in writing) Defects in the Work or the Facility, direct the proper conduct of remedial actions relating to the performance of the Facility, perform the Acceptance Tests and accept back charges, if any, for Contractor's account. The Project Manager shall act as Contractor's single point of contact with Owner in all matters relating to this Agreement, shall agree upon procedures for coordinating Owner's efforts with those of Contractor, and shall furnish information, when appropriate, to Owner. No amendment or modification of this Agreement shall be effected except by an amendment as provided for in Section 1.3 or by a Change Order, as the case may be.
- 4.4.3 Key Personnel. Contractor's Key Personnel shall be competent and experienced employees who hold the positions indicated in Attachment E provided that, upon Contractor's request, Attachment E shall be updated after the Effective Date to account for personnel changes, if any, since the Effective Date, which personnel changes shall be made upon the written approval of Owner, such approval not unreasonably to be withheld or delayed. Contractor shall use its reasonable efforts to ensure that such Key Personnel will be engaged in the prosecution of the Work continuously until their role therein is completed unless prior release is approved by Owner. Excluding voluntary resignations or terminations for cause, Key Personnel shall not be changed without the approval of Owner, which approval shall not be unreasonably delayed or withheld. Contractor shall remove from the Work and replace any individual Key Personnel promptly upon receiving notice from Owner that such individual has in good faith become objectionable to Owner, together with the reasonable grounds therefor. However, neither this authority of the Owner nor a decision made in good faith to exercise or not to exercise such authority shall create a duty or responsibility of Owner to Contractor or any Subcontractor, their agents or employees, to other Persons performing portions of the Work, or to any other Person. Replacement of or addition to such Key Personnel shall only be made with persons having qualifications equal to or better than those replaced or added, and with Owner's prior consent, which consent shall not unreasonably be withheld or delayed.
- 4.4.4 Personnel for Start-up and Testing. Contractor shall maintain qualified personnel on the Site as reasonably necessary to consult with Owner regarding the operation and maintenance of the Facility (i) during Start-up and testing thereof, and (ii) until Final Completion. After two (2) months from Mechanical Completion these services shall be on a Cost reimbursable basis.

4.5 Provision of Materials, Supplies and Services Contractor shall provide all of the following:

- 4.5.1 Provision by Contractor. Contractor shall promptly perform, provide or procure all services, Materials and Supplies, Contractor's Construction Equipment, tools and Equipment required for performance of the Work and shall perform all services related to such procurement (including inspection, expediting, shipping, unloading, receiving, inventory, customs clearance and claims of all such Materials and Supplies and Equipment). Contractor shall inspect and expedite the delivery of all Materials and Supplies, Contractor's Construction Equipment, tools, and Equipment required for performance of the Work, keeping Owner informed as to the status of deliveries and other procurement activity. If any such services, Materials and Supplies, Contractor's Construction Equipment, tools, or Equipment are not being properly manufactured, provided or fabricated in accordance with specifications, or do not otherwise conform with this Agreement, Contractor promptly shall notify Owner of such occurrence, including the effect thereof, if any, on the Project Schedule and Contractor's plan for corrective action.
- 4.5.2 Temporary Construction Facilities. Contractor shall provide or procure, or construct, all temporary construction materials and supplies, Contractor's Construction Equipment, tools and

facilities (whether on or off the Site) required for performance of the Work, (the "**Temporary Construction Facilities**"). Contractor shall remove all Temporary Construction Facilities applicable to the Facility prior to Substantial Completion, to the extent required to meet the conditions to Substantial Completion set forth in Section 12.3.1, and shall remove the remaining Temporary Construction Facilities prior to Final Completion. In each case such removal shall include restoration of the site thereof to its condition prior to commencement of construction.

- 4.5.3 Utilities. Subject to Attachment E, Contractor shall provide all permanent and temporary utilities and utility services not required to be provided by Owner under Section 3.7 including telecommunications services, compressed air, and (subject to Section 4.17) solid waste removal and disposal services, in each case as necessary for Contractor's performance of the Work, during the period from commencement of the Work through Final Completion.
- 4.5.4 Start-up, etc.
- (a) Contractor shall, in accordance with the requirements included in Attachments A & B, provide all spare parts and other Materials and Supplies necessary or appropriate for Start-up or testing of the Facility until the Substantial Completion Date (other than those quantities consumed by operation of the Facility), and shall keep possession of such spare parts and other Materials and Supplies until the Substantial Completion Date of the Facility has occurred.
- (b) Contractor shall, in accordance with the requirements included in Attachment A & B, provide all chemicals and lubricants necessary or appropriate for Start-up or testing of the Facility until the Substantial Completion Date, including materials utilized by Contractor for purging purposes, other than those quantities consumed by operation of the Facility.
- (c) Owner will provide in a timely manner the natural gas or other necessary Materials or Supplies for Start-up, testing, or operation of the Facility.
- 4.5.5 Electrical and Thermal Consumption Prior to Substantial Completion Date.
- (a) Contractor shall perform the Work or any part of it prudently and efficiently, including using commercially reasonable efforts in minimizing electricity usage and optimizing thermal efficiency as far as practicable consistent with Contractor's Start-up and testing responsibilities included in Attachment E.
- 4.5.6 Spare Parts. Not less than one year prior to the date Contractor expects the Facility to achieve Substantial Completion, Contractor shall, in accordance with the requirements included in Attachment E, provide Owner with a list of capital operating and maintenance spare parts recommended by Contractor for the safe, proper, and prudent operation and maintenance of the Facility. To the extent requested by Owner, Contractor shall, on behalf of Owner and subject to Owner's reimbursement of actual Costs, purchase, transport to the Site and store the same until the Substantial Completion Date. If any operating spare parts are utilized during the Warranty Period to fulfill Contractor's Warranty obligations under this Agreement, or subsequent to the Substantial Completion Date in performing the Work needed to achieve Final Completion, Contractor shall replace such operating spare parts with new operating spare parts meeting the requirements of this Agreement.
- 4.5.7 Special Tools. Not less than ninety (90) days prior to the date Contractor expects to achieve Substantial Completion, Contractor shall in accordance with the requirements included in Attachment E provide Owner with a list of special tools required for the safe, proper, and prudent operation and maintenance of the Facility. Contractor shall provide all such special tools to Owner prior to Substantial Completion.
- 4.5.8 NOT USED.
- 4.5.9 Maintenance of Site. Consistent with good and generally accepted construction practices and within the requirements of the Port of Tacoma and all permit requirements, Contractor shall maintain the Site substantially free of waste material and rubbish. Contractor shall leave the

affected portions of the Site clean and ready for use at the time of Substantial Completion. Contractor shall clear the affected portions of the Site of all temporary structures and roads, surplus Materials and Supplies, Contractor's Construction Equipment and construction tools not later than Final Completion.

4.5.10 Spare Parts of Subcontractors. Contractor shall include in each Subcontract entered into with a Major Subcontractor or Supplier a requirement that the Major Subcontractor or Supplier notify the Parties in writing in the event it at any time intends to discontinue supplying any functional spare parts and permit Owner to order any quantity of any such parts at the prices therefore prevailing prior to such discontinuance of supply.

4.5.11 NOT USED.

4.5.12 Site Access. Owner shall provide access roads and other permanent and temporary site access control measures to the Site unless specifically provided otherwise in Attachment B.

4.6 Equivalent Materials

Whenever any Equipment or Materials and Supplies are specified by Owner using the name of a proprietary item or the name, catalog or model number of a particular manufacturer, fabricator, vendor or distributor, the naming of the item is intended to establish the type, function and quality required. Notwithstanding such designation, Contractor may use other Materials and Supplies or Equipment if and only if such other Materials and Supplies or Equipment are of equal or better quality, are approved or accepted by Owner, such approval not to be unreasonably withheld, and are obtained from a manufacturer, fabricator, vendor or distributor approved by Owner and Contractor.

4.7 Relevant Information

Contractor shall have full responsibility for designing and engineering the Facility and the Work in accordance with this Agreement. Without limiting the provisions of Section 4.16 and Section 4.17, Contractor may rely upon that information provided by Owner as set forth in Attachment B defined as "**Relied Upon Information**".

4.8 Interconnection Facilities

Subject to the provisions of Section 3.2, Contractor shall provide all necessary interconnections for the Start-up, testing, and operation of the Facility in accordance with Attachment E. Contractor shall provide and review with Owner the design and specifications of all applicable interconnection facilities and the construction schedule for such interconnection facilities. Work within or interconnections to any existing facility shall be coordinated by Contractor with Owner and carried out to minimize disruption of the operations of such facilities. Without limiting the provisions of Section 4.16, no review, comment, or approval of the design and specifications for such interconnection facilities by Owner shall be construed as approving, confirming or endorsing the design thereof or as any warranty of safety, durability or reliability of such interconnection facilities or any part thereof, and Owner shall not be responsible for strength, details of design, adequacy or capacity of such interconnection facilities or any part thereof. Contractor shall notify Owner promptly upon discovering any condition of such existing piping or equipment or other interconnection point which may adversely affect such interconnection, and the Parties shall meet promptly to resolve such issues.

4.9 Technical Support

Contractor shall, until expiration of the Warranty Period, provide such reasonable technical assistance as is requested by Owner in dealing with any Governmental Authority, Owner's suppliers or customers, Owner's other contractors, and other matter relating to the Work and the Facility, and shall attend such meetings with Owner, Owner's representatives, customers, suppliers, and other contractors, and any Governmental Authority, as reasonably may be requested by Owner. Contractor shall be reimbursed for its time and expenses in doing so after Final Completion unless such assistance is the result of a

failure by Contractor to meet its obligations under this Agreement.

4.10 Training

Contractor shall be responsible for training and familiarization of Owner's properly qualified supervisors, operators and maintenance personnel ("**Regular Operating Personnel**") for the Facility in accordance with Attachment E.

Contractor shall prepare and submit a training procedure to Owner for review and comment no later than ninety (90) days prior to the date Contractor is to commence such training under the Project Schedule. Owner agrees to provide any such comments to Contractor within fifteen (15) Business Days of receipt of such training manuals from Contractor. If Owner comments on the training procedure and schedule submitted by Contractor, Contractor shall, within ten (10) days of Contractor's receipt of such comments, meet with Owner to discuss such procedures and schedule, and Owner's comments thereon. Contractor and Owner shall use reasonable efforts to reach agreement thereon at least fifteen (15) days prior to the expected date on which Contractor is to commence such training under the Project Schedule.

Training aids shall be provided as required to adequately present the subject material. The general topics of the training shall encompass all information necessary for efficient and proper Start-up and operation of the Facility, and basic maintenance and repair of the major Equipment. Training shall consist of classroom and on-the-job operational training from qualified personnel, including instruction from Major Subcontractors and Suppliers. All Contractor and Subcontractor training sessions shall be coordinated in a manner sufficient to provide all of the Regular Operating Personnel with an adequate understanding of all the operation and maintenance aspects of the Facility as an integrated whole. Each of the Regular Operating Personnel shall receive training as contemplated in this Section 4.10.

4.11 Safety and Security

4.11.1 Compliance with Laws. Contractor's performance of the Work shall include the provision of all necessary permanent safety and security devices and systems required by Government Authorities, applicable Laws, Governmental Approvals, or the safety and security requirements of Contractor's insurers. Work performed and Materials and Supplies and Equipment provided hereunder shall comply in every respect with all such requirements.

4.11.2 Safety Programs. Contractor shall be responsible for initiating, maintaining and supervising all safety and security precautions and programs in connection with the Work. Contractor shall have the right and obligation to control and shall take all reasonable precautions for the safety and security of, and shall provide all reasonable protection, including meeting all applicable OSHA and WISHA requirements, to prevent damage, injury or loss to: (i) all of its and its Subcontractors' employees engaged in connection with the Work and all other Persons who may be affected thereby; (ii) the Facility, the Work, and all Materials and Supplies and Equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of Contractor or any Subcontractors; and (iii) other property at the Site or adjacent thereto, as more specifically set forth in Section 4.11.3. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall be solely responsible for conditions of the portion of the Site it controls, including safety of all persons and property, during performance of the Work. Contractor shall maintain the Site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by Owner of Contractor's performance shall not be construed to include a review of the adequacy of Contractor's safety measures in, on or near the Site.

4.11.3 No Damage to Adjacent Property.

(a) Contractor shall use every reasonable means to protect any and all electric lines and poles, telephone lines and poles, waterways, railways, sewer lines, pipelines, drainage ditches, culverts and any and all property of others from damage as a result of its performance of the Work.

Subject to Section 4.16 and Section 4.17, and without limiting the provisions of Section 4.21, in the event that any such property is damaged or destroyed in the course of Contractor's or any Subcontractor's performance of the Work, to the extent caused by Contractor or its Subcontractor, Contractor shall rebuild, restore or replace such damaged or destroyed property. To the extent any damages described in this paragraph are covered by the builder's risk insurance policy to be obtained and maintained by Owner pursuant to Section 22.3.1, Contractor's liability for the costs to rebuild, restore, or replace the same shall be subject to Section 22.4.1.

(b) Contractor shall use only the access road and the other entrance or entrances to the Site specified by Owner for ingress and egress of all personnel, vehicles, Equipment, Contractor's Construction Equipment, tools, and Materials and Supplies.

- 4.11.4 Safeguards. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all safeguards for safety, security, and protection, including barriers, fences and railings. Contractor shall post danger signs and other warnings against hazards, promulgate safety and security regulations and notify Owner and users of adjacent utilities of any dangerous or hazardous conditions. Contractor shall exercise the utmost care in the use and handling of Hazardous Materials and Contractor's Construction Equipment and only employees of Contractor or Subcontractors who are competent, trained and experienced, and properly licensed (if required) shall be permitted to handle such Hazardous Materials and Contractor's Construction Equipment. Contractor's obligations concerning Hazardous Materials shall apply only to those Hazardous Materials brought by Contractor to the Site.
- 4.11.5 No action or inaction of Owner relating to safety or property protection or a violation thereof, other than the gross negligence, willful misconduct or violation of Law, will: (1) relieve Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon Owner to inspect or review Contractor's safety program or precautions or to enforce Contractor's compliance with the requirements of this Agreement; (3) impose any continuing obligation upon Owner to ensure that Contractor performs the Work safely or to provide such notice to Contractor or any other Person or entity; (4) affect Contractor's sole and complete responsibility for performing the Work safely or Contractor's responsibility for the safety and welfare of its employees; or (5) affect Contractor's responsibility for the protection of property and personnel.

4.12 Documentation

- 4.12.1 Preliminary Design Drawings. Contractor shall deliver to Owner, in a timely manner consistent with the Project Schedule and Attachment B, preliminary design drawings in the format and manner set forth in Attachment B. Owner shall provide its approval or comments on such preliminary design drawings to Contractor in accordance with the Attachment B within ten (10) Business Days of receipt of the drawings. Failure to do so within such period shall deem the drawings accepted.
- 4.12.2 Detailed Design. Contractor shall prepare, during the period set forth in the Project Schedule and Attachment B, the detailed design of the Facility (the "**Detailed Design Preparation**"). Contractor shall deliver to Owner, in a timely manner consistent with the Project Schedule and Attachment B, detailed design drawings and specifications for the Facility. Owner shall provide its approval or comments on such detailed design drawings and specifications to Contractor as in accordance with Attachment B within ten (10) Business Days of receipt of the drawings. Failure to do so within such period shall deem the drawings approved. Contractor shall provide to Owner complete and up-to-date marked-up versions of such design drawings and specifications, including all referenced Contractor specifications as part of the IFC drawing set, prior to Substantial Completion.
- 4.12.3 Early Start-Up Drawings and Specifications. For Start-up Contractor shall, in accordance with Attachment E, provide the appropriate portions of marked-up (redlined) as-built drawings and specifications containing adequate associated design and vendor information to enable proper

orientation and training of qualified personnel of Owner so as to allow for a safe, efficient and effective Start-up.

- 4.12.4 Delivery of Job Books. Contractor shall, in accordance with Attachment A, provide complete final design drawings and specifications accurately reflecting the final "as-built" configuration of the Facility to Owner not later than the date of Final Completion. The final "as-built" drawings and specifications shall include final "as-built" drawings and specifications for any early Start-up units or systems reflecting all approved design changes from originally provided drawings and specifications.
- 4.12.5 Operating Manuals. Contractor shall, in accordance with Attachment A, provide an operating manual for the Facility, integrating all of Contractor's and its Subcontractors' specifications, manuals or instructions, including operating and test data and manuals, spare parts manuals, training aids and all other informational materials necessary to Start-up, test, operate and maintain the Facility safely and properly (the "**Operating Manual**"). Such Operating Manual may consist of a separate Facility Operating Instructions/Procedures and Operating/Facility Manuals. Contractor shall submit each Operating Manual to Owner for review and comment no later than ninety (90) days prior to the expected Certificate Receipt Date for Substantial Completion for the Facility. Owner shall provide any such comments to Contractor within thirty (30) days of receipt of the Operating Manual from Contractor. Contractor shall, within ten (10) days of Contractor's receipt of such comments on the draft Operating Manual, meet with Owner to discuss such manual and Owner's comments thereon. Contractor and Owner shall use reasonable efforts to reach agreement thereon at least fifteen (15) days prior to the expected Certificate Receipt Date for Substantial Completion for the Facility.
- 4.12.6 Format of Documentation. All drawings, specifications, manuals, parts lists, test certificates, performance curves, data sheets, and other documentation required to be provided by Contractor hereunder shall be supplied by Contractor to Owner in hard copy, in reproducible form, and in electronic format as required by Attachment E.

4.13 Progress Reports and Meetings

Contractor shall, in accordance Attachment E, arrange for and conduct regularly scheduled meetings with Owner throughout engineering and construction of the Facility to discuss the progress and status of engineering and construction. These meetings shall occur at least monthly during engineering and weekly during construction of the Facility. Unless otherwise agreed by the Parties, until such time as Contractor's performance of the Work predominantly consists of construction activities, such meetings shall be held at Contractor's premises (home office or execution office or both), and thereafter they shall be held at the Site. Such meetings shall be attended by the Project Manager (or his or her duly authorized representative) and Owner's Representative (or his or her duly authorized representative), and by such additional representatives as each Party may desire.

Additionally and in accordance with Attachments E, Contractor shall provide Owner with a progress report containing the following information with respect to the Work performed in the previous month:

- (a) a description of Contractor's and all Subcontractors' activities in performance of the Work and the progress of, and any delays to, design, engineering, procurement, construction, Start-up, testing, Substantial Completion, and Final Completion as compared with the Project Schedule;
- (b) an identification and evaluation of problems and deficiencies in the Work, including any Defects and an evaluation of any factors which are anticipated to have a material effect on the Project Schedule;
- (c) a description of the Work which has been completed;
- (d) the status of major Materials and Supplies and Equipment deliveries;
- (e) a description of the scope and status of any agreed or pending Change Orders; and

(f) a description of anticipated activities in the coming month of Contractor and each Major Subcontractor in performance of the Work.

4.14 Cooperation Between Contractors

Owner hereby expressly reserves the right to let other contractors perform work at the Site and Contractor hereby acknowledges the same. Contractor shall not interfere with and shall use commercially reasonable efforts to cooperate in all material respects with such other contractors, shall provide access opportunities to the Site and reasonable storage at the Site for all such other contractors, and shall coordinate the performance of its Work at the Site with the work of all other contractors. Likewise, Owner shall cause all other contractors performing work at the Site to not interfere with, and coordinate their performance of work at the Site with, Contractor's performance of Work at the Site and to cooperate with Contractor in all other material respects. Other contractors performing work at the Site must adhere to and comply with Contractor's safety program. For the avoidance of doubt, Owner and not Contractor is solely responsible for the coordination of any other contractor's work with that of Contractor. To the extent such coordination affects the Contract Price or Project Schedule, Contractor shall be entitled to a Change Order for the extension of time and an equitable adjustment in the Contract Price.

4.15 Compliance with Owner's Policies and Regulations

Contractor shall observe, and shall cause its Subcontractors and the employees of each of them to observe, all of Owner's and the Port of Tacoma's applicable policies and regulations with respect to the Facility, the Site and performance of the Work, as described in this Agreement and as revised from time to time, including those pertaining to maintenance of a drug-free work place, the safety and security of persons and property and housekeeping. Additionally, for Work in any existing facility OSBL, Contractor shall observe, and shall cause its Subcontractors and the employees of each of them to observe, all of Owner's applicable policies and regulations with respect to work hours.

4.16 Site Conditions

4.16.1 Subject to the other provisions of this Section 4.16, and to Section 4.17 and Section 4.21, Contractor acknowledges that it has visited or has had an opportunity to visit the Site to inspect the general and local conditions which could affect the Work, and is reasonably satisfied based on the opportunity it has to inspect the Site, and from a review of the environmental and geotechnical site exploration reports provided by the Owner ("Geotechnical Reports"), as to all matters affecting the Site and all conditions at the Site that can be reasonably determined from an inspection, including access to the Site (including highways, roads, bridges, traffic, and other access), and adequacy of laydown areas, and Contractor shall assume the cost and risk of performing the Work notwithstanding any such matter or condition. Notwithstanding the foregoing, Contractor shall not be obligated to perform any soil or subsurface investigation or testing, Contractor shall be entitled to rely upon the adequacy and accuracy of the Geotechnical Reports in performing the Work, and Contractor may request a Change Order in respect of any Cost or schedule impact to the extent the subsurface is materially different from, or not reasonably inferable from, the Geotechnical Reports.

4.16.2 Subject to the other provisions of this Section 4.16, and to Section 4.17 and Section 4.21:

(a) Contractor, in determining the Contract Price and the Project Schedule, including the Substantial Completion Date, shall be deemed to have relied on the disclosure by Owner of existing manmade subsurface structures in, on, or about the Site, and Contractor may rely on such disclosure for purposes of the Detailed Design Preparation, subject to the other provisions of this Agreement including Section 4.7 and Section 4.17. Contractor shall design and engineer the Facility, and otherwise shall perform the Work, in conformance with this Agreement notwithstanding the presence of such disclosed, existing, manmade subsurface obstructions;

(b) Contractor in determining the Contract Price and the Project Schedule, including the Substantial Completion Date, shall be deemed to have relied on the disclosure by Owner of

geotechnical and other naturally occurring (and not manmade) conditions in, on, or about the Site, subject to the other provisions of this Agreement, including Section 4.7 and Section 4.17. Upon discovery, deviations of actual site conditions from those set forth in such disclosure shall be an Owner Site Risk as contemplated by Section 4.16.3; and

(c) Contractor shall not rely on, and shall not be deemed to have relied on, any disclosure or documentation provided to Contractor by or on behalf of Owner other than as described in this Section 4.16.2 or in Section 4.7 or Section 4.17.

4.16.3 Owner shall be deemed to have retained the cost and risk of the following matters and conditions ("**Owner Site Risks**"):

(i) existing Hazardous Materials in, on or about the Site (but subject to Section 4.17 and Section 4.21),

(ii) archeological finds,

(iii) existing subsurface structures or conditions in, on, or about the Site, if any, not identified with reasonable specificity in information provided to Contractor, and Section 4.16.2(a) or (b), and

(iv) errors, inaccuracies, or omissions in the Site information described in Section 4.16.2(a) or (b).

4.16.4 The cost and risk of Owner Site Risks shall be retained by Owner and shall be grounds for a Change Order, as contemplated by Section 9.3; provided, that Contractor's design and engineering of the Facility shall be prepared, and the Work otherwise shall be conducted, to minimize additional costs, delay, or risks resulting from disclosed Owner Site Risks and, from and after the date of discovery, discovered Owner Site Risks.

4.16.5 If any Owner Site Risk is encountered on the Site, Contractor shall (a) immediately cease work in the affected area, (b) continue work in unaffected areas as identified by Owner, (c) promptly notify Owner of such conditions, and (d) promptly use all reasonable efforts to mitigate, or assist Owner in mitigating, the effects of any such discovery.

4.16.6 Contractor shall be entitled to a Change Order for encountering archeological finds and pre-existing hazardous materials and Owner hereby agrees that Contractor shall have a right to claim or seek an increase in the Contract Price or an adjustment to the time of completion with respect to physical conditions at or around the Site, including Site conditions.

4.17 Existing Hazardous Materials

4.17.1 Without limiting the provisions of Section 4.16 or Section 4.21, Contractor hereby acknowledges disclosure by Owner of existing Hazardous Materials in, on or about the Site as identified with reasonable specificity in Attachment B, and Contractor shall design and engineer the Facility, and otherwise shall perform the Work, in conformance with this Agreement notwithstanding the presence of disclosed existing Hazardous Materials.

4.17.2 Contractor shall implement those programs described in Attachment F with respect to Hazardous Materials.

4.17.3 For the avoidance of doubt, Contractor shall not be responsible for any activities, costs, including mark-up, and expenses associated with the monitoring, remediation, restoration, or related activities with respect to existing Hazardous Materials at the Site (including those disclosed in Attachment B). The impact of such Hazardous Materials, if any, to the Project Schedule or the Guaranteed Completion Date due to any performance, or delay or omission in the performance of such activities, shall be an Owner Delay.

4.18 Surveying. The Contractor shall plan and lay out all Work in advance of installation so as to coordinate all Work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind, and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, storm, sewer, drains, grade and invert elevations.

4.19 Not Used

4.20 Not Used

4.21 Hazardous Materials

4.21.1 Introduction/Generation. Contractor shall not bring, and shall not permit Subcontractors to bring, any Hazardous Material onto the Site except as necessary and appropriate to perform the Work. If Contractor's performance of the Work includes supplying, using, or generating Hazardous Materials, Contractor shall notify Owner not less than fourteen (14) days before beginning such Work. Notice shall include a listing of the name, chemical composition, a Material Safety Data Sheet, and the location of storage and use for each Hazardous Material, and shall establish the quantity of each Hazardous Material to be used or generated at the Site.

4.21.2 Hazardous Materials Used by Contractor. Contractor shall only be fully responsible for any Hazardous Materials created or brought on the Site by Contractor or any Subcontractor ("**Contractor Hazmats**") and for the proper handling of such Contractor Hazmats. Contractor Hazmats shall be stored and used in accordance with the requirements of this Agreement, including applicable Laws. Contractor shall maintain an accurate record and current inventory of Contractor Hazmats used or stored at the Site, identifying quantities, and location of storage, use and final disposition.

Contractor shall implement and administer a Hazardous Material handling program for all of its employees and all Subcontractors. The program shall include: (a) development of guidelines and training with respect to the proper handling, use and disposal of Contractor Hazmats, and (b) the development, implementation and enforcement of procedures for notification of Owner and appropriate Governmental Authorities about and clean-up of, spills and other emissions of Contractor Hazmats. Contractor shall be responsible for all clean-up, remediation, and mitigation required in connection with any spills, emissions or environmental problems related to Contractor Hazmats; provided, that offsite transportation or disposal shall be arranged and coordinated by Owner. Contractor shall properly contain any Contractor Hazmats at an on-site location designated by Owner for further handling, transportation, and disposal by Owner at Contractor's cost as part of Owner's site-wide Hazardous Material removal and disposal program. For the avoidance of doubt, Contractor shall not be deemed the "generator of record" or similar designation on any waste manifest or for any other regulatory purpose for any waste, whether hazardous or non-hazardous, originating from the Site.

4.21.3 Removal. Contractor, upon completion of the applicable portion of the Work, shall remove from the Site all Contractor Hazmats not used or consumed in performance of the Work; provided that offsite transportation or disposal shall be coordinated in advance with Owner.

4.21.4 Indemnification by Contractor. Contractor shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any claims, loss, liability, or damage, including reasonable attorneys' fees and costs, to which the Owner Indemnified Parties may be subjected or incur to the extent caused in connection with the use, release, handling, storage, remediation, disturbance, transportation or disposal of any Contractor Hazmats. It is understood and agreed

that Owner shall have no liability with respect to any Hazardous Materials brought onto the Site by Contractor and Owner will be indemnified by Contractor with respect to same, except to the extent a release or spill of, or contamination by, Contractor Hazmats is caused by Owner's gross negligence or willful misconduct.

- 4.21.5 Indemnification by Owner. Owner shall indemnify, defend and hold harmless the Contractor Indemnified Parties from and against any claims, loss, liability or damage, including reasonable attorneys' fees and costs, to which the Contractor Indemnified Parties may be subjected or may incur to the extent caused in connection with the use, release, handling, storage, remediation, transportation or disposal of any Hazardous Materials located on or about the Site other than to the extent Contractor is required to indemnify the Owner Indemnified Parties pursuant to Section 4.21.4. It is understood and agreed that Contractor shall have no liability with respect to any Hazardous Materials existing at the Site prior to the commencement of the Work by Contractor and not brought onto the Site by Contractor and Contractor will be indemnified by Owner with respect to same, except to the extent a release or spill of, or contamination by, such pre-existing Hazardous Materials is caused by Contractor's gross negligence or willful misconduct.

4.22 Books and Records: Audit

- 4.22.1 Contractor agrees to retain, for a period three (3) of years from Final Completion of the Facility, all records relating to its performance of the Work, and to cause all Major Subcontractors and Major Suppliers to retain for the same period all their books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, electronic data, emails and other evidence relating or pertaining to the costs and/or performance of this Agreement. Any request to audit and inspect shall under no circumstances require access to or copies of any legally privileged or attorney client communications and provisions of such communication shall not act as a waiver of any such legal rights or privileges.
- 4.22.2 In addition to the records described in Section 4.22.1, Contractor shall establish and maintain for such period, on a current basis proper, accurate and complete books, records, and accounts as reasonably may be necessary to verify (a) all calculations of amounts invoiced by Contractor to Owner on a Time and Materials Basis, (b) any adjustment (other than on an agreed lump-sum basis) to the Contract Price, and (c) Contractor's costs, including mark-up, and charges in connection with a termination of this Agreement as provided in Section 16.1.2 (collectively, "**Cost Records**"). All such Cost Records shall be established and maintained generally in accordance with GAAP, and shall be in a format sufficient to permit the verification referred to in the preceding sentence.
- 4.22.3 Owner or its representatives during such period shall have the right, upon reasonable notice from Owner to Contractor and during normal business hours, to inspect and audit the books, records, and accounts which Contractor is required to maintain under this Section 4.22. Within seven (7) days of Owner's written request, Contractor agrees to make available at the office of Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract and a waiver of all claims by Contractor. Any such inspection and audit of the Cost Records shall be on an open-book basis, for the sole purpose of verifying the amounts described in Section 4.22.2, or Section 16.1.2, Contractor shall not be required to keep records of, or provide access to, the make-up of agreed lump sums or agreed fixed rates. With respect to any such audit conducted by, or on behalf of, Owner after the Final Completion Date, Owner shall reimburse Contractor for the reasonable costs and expenses it incurs relating to such audit to accommodate or support Owner, unless, as a result of such audit, a material deficiency of Contractor is established.

ARTICLE 5: COMMENCEMENT OF THE WORK

5.1 Notice to Proceed

- 5.1.1 Notice to Proceed. Execution of this Agreement shall be deemed Owner's issuance to Contractor of full notice to proceed with the Work (the "**Notice to Proceed**").

ARTICLE 6: QUALITY ASSURANCE / QUALITY CONTROL AND INSPECTION

6.1 Quality Control

- 6.1.1 Contractor Responsibility. Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in accordance with this Agreement, including the then current issue of the drawings and specifications. Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. Contractor shall determine when it is necessary to perform, and shall perform, tests (as part of the Contract Price and in addition to those requested by Owner or required by the specifications or any other provision of this Agreement) to verify its inspections or to ensure that the Work is being completed in accordance with this Agreement.
- 6.1.2 Quality Control and Inspection Program. Within ninety (90) days after the Effective Date, Contractor shall, in accordance with the requirements included in Attachment E, prepare and deliver to Owner for its approval, which approval shall not unreasonably be withheld or delayed, a formal program for inspecting and testing all aspects of the Work (the "**Quality Assurance / Quality Control Systems and Plans**"). The Quality Assurance / Quality Control Systems and Plans shall meet all quality standards customary in the engineering and construction practices and all the quality control and inspection needs of the Work. The individual responsible for implementing the Quality Assurance / Quality Control Systems and Plans shall be identified by Contractor to Owner.
- 6.1.3 Contractor Inspection. Contractor shall perform all quality control and inspection activities related to the Work as required by the approved Contractor's Quality Assurance / Quality Control Systems and Plans and this Agreement. Contractor may not rely upon Owner or any other individual or Governmental Authority to provide such services. Contractor shall properly inspect and test the Work, including all design, installation, engineering, Materials and Supplies, Equipment and tools performed or provided.

6.2 Inspection Rights

- 6.2.1 Owner shall have the right to inspect all Work, including any item of Equipment, Material and Supplies, service or workmanship to be provided, and witness all tests to be performed, under this Agreement. Contractor shall provide reasonable advance notice to Owner of its intention (or the intention of any Subcontractor) to seal any portion of the Work, and shall afford Owner reasonable opportunity to inspect such portion before it is sealed. Contractor may proceed to seal such portion whether or not Owner conducts such inspection after such notice. Owner shall also have the right to order Contractor, at Contractor's sole cost and liability, to reopen any portion of the Work that has been sealed in order to inspect the same; provided, that, if Contractor provided Owner with reasonable advance notice and if any such inspection for which Contractor had provided such notice does not reveal any Defects, Owner shall pay for the Cost of reopening and resealing such portion of the Work, and any delay in performance of the Work as a result of such inspection shall constitute an Owner Delay.
- 6.2.2 At the request of Owner, Contractor shall arrange for inspections provided for under Section 6.2.1 at any location that Work is performed or stored. Whether such inspections or witnessing of such tests take place at the Site, at Contractor's manufacturing facility, or at the manufacturing facility of a Subcontractor or Supplier, Contractor shall supply all necessary labor, Materials and Supplies, Equipment, Contractor's Construction Equipment, apparatus, instruments, and competent test personnel who shall be able to take complete charge of the inspection or tests, and shall be authorized to represent and make decisions for the proper carrying out of the inspection or tests to the reasonable satisfaction of Owner or in accordance with the Quality Assurance / Quality Control Systems and Plans, as applicable.

6.2.3 Contractor shall provide sufficient information on all test certificates, performance curves and data sheets to enable the Materials and Supplies, or Equipment to which they refer to be identified, which test certificates, performance curves and data sheets shall be subject to Contractor's and Subcontractor's reasonable requirements and procedures in respect of confidentiality and safety.

6.2.4 With Owner's written approval or participation, Contractor shall allow Government Authorities and the Port of Tacoma to observe and inspect the Work (whether on or off the Site) and the Facility and to observe all tests of the Work (whether on or off the Site) and the Facility, and allow Government Authorities full access to the Work (whether on or off Site) and the Facility and to Contractor's technical and design records pertaining thereto, in each case as reasonably requested by Owner (such access to be during normal working hours and subject to Contractor's and Subcontractors' reasonable requirements and procedures in respect of confidentiality and safety). Contractor shall not allow Government Authorities on the Site for inspection without the Owner's Representative being present or the prior written approval of Owner, except as required by applicable Law. If Government observation and inspection delay or cause additional Work for the Contractor beyond the inspection and test requirements of this Agreement, and if such delay or additional Work was not caused by Contractor's failure to abide by Law or the requirements of this Agreement, then the Contractor shall be entitled to a Variance.

6.3 Correction of Defects: Refusal to Accept Defective Work

Until the expiration of the General Warranty Period, and without limiting the other provisions of this Agreement:

(a) Contractor shall as soon as practicable correct any Defects or any part of the Work that is otherwise not in accordance with this Agreement, regardless of the stage of completion of the Work or the time or place of discovery of such Defects;

(b) unless Contractor shall have provided Owner, promptly upon Owner's request, with a plan reasonably acceptable to Owner to correct such Defects promptly, and shall be diligently pursuing such plan, Owner shall have the right to refuse to accept, or to direct Contractor to refuse to accept, any portion of the Work, including any design, engineering, Materials and Supplies, Equipment, installation, or tools, which does not conform to this Agreement or which contains Defects; and

(c) as soon as practicable after receiving written notice from Owner, Contractor shall, at Contractor's sole cost, expense, and liability, repair or replace such Work that Owner has refused to accept or has directed Contractor to refuse to accept. If Contractor shall have failed promptly to commence and diligently to pursue repair or replacement within ten (10) Business Days and to conclude such action as soon as practicable, but in any event not more than sixty (60) days after such notice from Owner, Owner may, but is not obligated to, pursue such repair or replacement through means other than Contractor and shall deduct the reasonable and documented cost thereof from the Contract Price.

6.4 Effect of Exercise or Waiver of Inspection Rights

If Owner shall inspect any Work, approve any items or witness any tests, or waive or fail to exercise its right to inspect any Work or witness any test as herein provided, it shall in no way relieve Contractor of full liability for the quality, character, proper operation and performance of the completed Work, and every part of it, nor shall it prejudice or affect the rights of Owner under this Agreement. Furthermore, witnessing of any tests or any inspections of Work by Owner, or any failure by Owner to do so, shall not be construed as an approval or acceptance of the Work or any part thereof.

ARTICLE 7: TESTING

As customary or required by specifications, industry codes and standards, or this Agreement,

Contractor shall perform, or cause to be performed, one or more factory tests of any of the Equipment. Each Subcontract or Purchase Order for such Equipment shall include proposed test dates and shall describe the inspection points, witness points, and hold points, the tests to be performed, the items of Equipment to be tested, the standards and methods of testing, and the testing facility's capabilities. Contractor shall notify Owner at least five (5) Business Days prior to such dates if a date has changed. Owner shall have the right to be present at such points and tests. Contractor shall provide, or make available at its facilities, the results of such required tests to Owner within twenty (20) days of the completion of each such test. Successful completion of such tests shall be a precondition to shipment of each tested item of Equipment to the Site.

7.1 Acceptance Testing

See Attachment D for testing.

ARTICLE 8: WARRANTIES RELATING TO THE WORK

8.1 Contractor's Warranty

8.1.1 Contractor hereby warrants for the benefit of Owner (the "**Warranty**") that with respect to the Facility:

(a) all Equipment and Materials and Supplies furnished hereunder will be new (unless authorized otherwise) and of good quality and in accordance with this Agreement and the specifications including, in respect of the Facility, suitable for the purpose specified in this Agreement, receiving Feed Stock and for producing products in accordance with the design and specifications for the Facility, and the Work will be performed in a skillful and workmanlike manner, free from Defects (and latent Defects that become apparent prior to the expiry of the applicable General Warranty Period and that are asserted in accordance with Section 8.3.1), whether in design, engineering, workmanship, materials or otherwise;

(b) the Work will be performed (including the design, engineering, procurement, construction, Start-up, testing, and completion of the Facility) in accordance with, and the Work when complete will comply with, this Agreement and the standards set forth in Section 4.1.1;

(c) the Work as designed and when complete shall be capable of being operated in full compliance with all applicable Laws in effect on the Effective Date; and

(d) Contractor shall at all times exercise the skill, care and diligence in the carrying out and completion of the Work as should be exercised by a contractor that is fully skilled and experienced in the carrying out of work similar to the Work and shall have the resources, experience, qualifications and capabilities as are required fully to perform its obligations under this Agreement.

Owner may consider Work, Materials and Supplies, or Equipment not conforming to the above requirements, including substitutions not properly approved or authorized, defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of Materials and Equipment. Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in this Agreement. Warranties in this Agreement shall survive completion, acceptance and Final Payment.

8.1.2 Except as provided in Section 8.1.3, Contractor's Warranty with respect to the Facility shall extend for a period of twelve (12) months from the Mechanical Completion Date (each such period, as applicable, the "**General Warranty Period**").

8.1.3 If any Work is performed or modified after the Mechanical Completion Date as contemplated under Article 7 or Article 12 or if any Work is modified, corrected, repaired, replaced or re-performed pursuant to Section 8.3 during the applicable General Warranty Period, the Warranty

under this Section 8.1 shall apply to such Work for a period of one year from the date of such performance, modification, correction, repair, replacement or re-performance (such period, the "**Extended Warranty Period**" and together with the applicable General Warranty Period, the "**Warranty Period**"); provided, that the aggregate Warranty Period shall not exceed eighteen (18) months from the Mechanical Completion Date with respect to any portion of the Work.

- 8.1.4 Contractor shall have no obligation for breach of Warranty under this Section 8.1 to the extent that (i) normal wear and tear causes any damage or corrosion; (ii) damage or defect is caused by alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or damage or corrosion caused by the elements; (iii) such failure to meet the Warranty is the result of Owner's misuse of the Facility or the negligence or willful misconduct of Owner; (iv) without Contractor's approval, spare parts other than those supplied or recommended by Contractor have been used, so as to adversely affect the Facility or any applicable portion thereof; (v) the Facility or any relevant part thereof is installed, used or serviced by Owner or its contractors other than in conformance in all material respects with the applicable Operating Manual; or (vi) the cause of such breach of warranty is beyond Contractor's responsibility under this Agreement.
- 8.1.5 The Warranty set forth in Section 8.1.1 shall not apply to any used Equipment or any used Materials and Supplies that are provided by Owner and that are re-used or tied into by Contractor or its Subcontractors in connection with the Work. For avoidance of doubt, such Warranty shall apply to any design, engineering, installation, relocation, or other services, and to any Equipment or Materials and Supplies (subject to Section 8.2.1), provided by Contractor or its Subcontractors related to the Work.

8.2 Subcontractor's and Supplier's Warranties

- 8.2.1 For the Equipment Suppliers and other Subcontractors, Contractor shall obtain from the respective manufacturers their standard available warranties. All manufacturers' or other Subcontractors' warranties shall run to Contractor and Owner, and be assignable to Owner. Contractor shall be responsible for enforcing (to the extent in effect) the warranties of all Subcontractors and Suppliers through the applicable General Warranty Period and, if applicable, the relevant Extended Warranty Period.
- 8.2.2 Prior to placing the Purchase Order or executing any other Subcontract with a Major Subcontractor or Supplier, Contractor shall advise Owner what warranties are available from such Major Subcontractor or Supplier, and shall determine and advise Owner of the Cost increases to Owner for extending the period of such Major Subcontractor or Supplier warranties for a period beyond such Major Subcontractor's or Supplier's standard warranty period if available. If, within twenty (20) Business Days after Owner's receipt of Contractor's advisement under the preceding sentence, Owner notifies Contractor in writing that it elects to extend any such warranty as offered by such Major Subcontractor or Supplier, Contractor shall, at Owner's expense, extend such warranty. Prior to the Mechanical Completion Date, Contractor shall provide to Owner a list and a copy of all Subcontractors' and Suppliers' warranties that have been obtained by Contractor with respect to the Work, indicating their expiration periods and other pertinent information reasonably requested by Owner.
- 8.2.3 Contractor shall obtain warranties of at least twelve (12) months from each Subcontractor or Supplier performing Work that is intended to become a permanent part of the Facility (including design, engineering, and other services). Any Subcontractor or Supplier warranties that are still in existence at the end of the General Warranty Period shall be assigned on such date by Contractor to Owner. Thereafter, Contractor shall provide reasonable assistance to Owner in connection with the enforcement of any Subcontractor or Supplier warranty by Owner; provided, that the Owner's costs of such enforcement shall be to the account of Owner.
- 8.2.4 Contractor shall cause each Purchase Order or Subcontract containing warranties to include a provision whereby each such Subcontractor or Supplier consents to such benefit and

assignment of warranty to Owner and, to the extent available, the other rights of Owner under this Article 8. Contractor shall advise Owner of negotiations with Major Subcontractors and Suppliers concerning the availability of improved warranties or guarantees related to major items of Equipment to be incorporated into the Facility.

- 8.2.5 For avoidance of doubt, the provisions of this Section 8.2 shall not be deemed to limit Contractor's Warranty or Contractor's other obligations under this Agreement.

8.3 Correction of Nonconforming or Defective Work

- 8.3.1 If the Warranty set forth in Section 8.1 hereof is breached prior to the expiration of the General Warranty Period (or if applicable, the Extended Warranty Period), and Owner notifies Contractor in writing of such breach no later than thirty (30) days after the end of the General Warranty Period (or, if applicable, the Extended Warranty Period):

(a) Contractor, upon prompt written notice from Owner, shall repair, replace, correct or re-perform all affected Work within its original scope) promptly so as to fully remedy such breach and place the Work fully in compliance with the Warranty as expeditiously as possible, including if needed through overtime or the use of new parts or expedited shipping or manufacturing.

(b) Owner shall provide Contractor with full and free access to perform its Warranty obligations under this Agreement; provided, that Contractor shall do so in good faith coordination with Owner's schedule of operations so as to minimize any adverse effect on the operations of the Facility or the Existing Facility.

(c) Owner shall, to the extent necessary to perform the Warranty work, ensure that the Facility is disconnected from all piping and cleaned, freed of liquids, solids, explosives and combustible, toxic and asphyxiant gases and otherwise made safe by others at no cost to Contractor for performance of the repair work.

(d) If, after five (5) Business Days from receipt of a timely written notice of a breach of Warranty, Contractor has not commenced or is not then diligently pursuing such repair, replacement, correction or re-performance, then Owner, by notice to Contractor, may correct or cause to be corrected such Defect in accordance with this Agreement, and Contractor shall pay for all reasonable costs, charges and expenses actually incurred by Owner in connection with such repair or replacement. If Contractor fails to make such payment to Owner within fifteen (15) days of receiving Owner's request for such payment, the provisions of Section 13.5 shall apply.

- 8.3.2 Warranty and repair work performed by Owner for Contractor pursuant to Section 8.3.1 shall be performed in accordance with the following conditions:

(a) No act, error or omission or negligence on the part of Owner's personnel in the performance of Contractor's Warranty Work, other than the gross negligence, willful misconduct or violation of Law, shall in any way negate or otherwise excuse Contractor's obligations or Owner's rights under this Agreement, including the further Warranty of Work so performed; and

(b) Owner shall have no obligation to provide personnel to assist with the performance of any Contractor Warranty Work if Contractor's requests for such assistance become unreasonable or otherwise impair the Facility's operations.

- 8.3.3 To the extent Owner performs any Warranty or repair Work prior to compliance with Section 8.3.1(b) and Section 8.3.1(d), such work or repairs shall be at Owner's sole cost, liability and risk.

8.4 No Release

Neither any Completion Certificate, nor Final Payment, nor any documents associated with or related to any of the foregoing, shall relieve Contractor of its responsibility for Work not conforming to Contractor's Warranty under Section 8.1.

8.5 Limited Warranty

8.5.1 THE WARRANTIES SET FORTH IN THIS ARTICLE 8 ARE CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATIONS AND OWNER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO DEFECTIVE OR NON-CONFORMING WORK AND, OTHER THAN THE WARRANTIES PROVIDED HEREIN, THERE ARE NO OTHER GUARANTEES OR WARRANTIES OF ANY KIND OR DESCRIPTION, WHETHER EXPRESS OR IMPLIED AND WHETHER ARISING UNDER LAW OR EQUITY INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 9: CHANGES IN THE WORK

9.1 General

Subject to the provisions of this Article 9, Owner shall have the right to order changes in the Work, within the general scope hereof, whether such changes be modifications, alterations, additions or deletions.

9.2 Minor Modifications

Minor modifications or adjustments that involve no price or time adjustment and do not affect the Work to be performed or materials to be provided by Contractor as specified in this Agreement may be made by Contractor or Owner as mutually agreed and shall not require a Change Order. Minor modifications or adjustments not requiring Change Orders shall not affect the Contract Price, the Project Schedule, the Guaranteed Completion Date, the Performance Guarantees, the Acceptance Tests, or any other obligation of Contractor or Owner under this Agreement.

9.3 Change Orders

9.3.1 In the event that either Party contemplates making a change in the Work, such Party shall advise the other Party of same, and the Parties shall then promptly consult concerning the impact on the Contract Price, the Project Schedule (including the Guaranteed Completion Date) or any obligation of Contractor hereunder of implementing the proposed change. Following such consultation, Owner may request, and Contractor shall thereupon promptly and as soon as is reasonably practicable prepare, a detailed written quote relating to the contemplated change, as more particularly described in Section 9.3.4.

9.3.2 The Guaranteed Completion Date, the Project Schedule, and the Contract Price shall be subject to an equitable adjustment through a Change Order resulting from any of the following circumstances, without duplication (collectively, "**Owner Risks**"):

- (a) a suspension of the Work under Article 11 or Section 16.5;
- (b) any other Constructive Change Order;
- (c) a Change in Law made after the Effective Date of this Agreement;
- (d) an Owner Site Risk as provided in Section 4.16.3;
- (e) an Event of Force Majeure to the extent Contractor would be excused from performance of its obligations under this Agreement pursuant to Article 15;

- (f) an Owner Delay;
- (g) with respect to the Relied Upon Information as provided in Section 4.7;
- (h) the incremental Costs of providing Owner with assistance or documents as provided in Article 24;
- (i) not used;
- (j) delay in issuing the Notice to Proceed;
- (k) audit support costs in accordance Section 4.22.3; or
- (l) occupation of the Site by Owner in an emergency as provided by Section 2.3.3;

9.3.3 Notwithstanding any of the foregoing, no Change Order shall result to the extent that:

(1) Contractor, or its Subcontractors, have caused such delay or adjustment to occur, or contributed to the occurrence of such delay or adjustment, or failed to use all reasonable efforts to prevent or mitigate any delay or increased costs (including, where appropriate and reasonable under the circumstances, adjusting the Project Schedule);

(2) Contractor has failed to give initial notice to Owner within seven (7) days, or failed to provide the supporting information required under this Section 9.3 within fourteen (14) days, after Contractor became aware of or should have become aware of the effect of the event giving rise to the delay or adjustment; or

(3) The event in question is attributable to Contractor's, or its Subcontractor's, acts, omissions or defaults, or such event is not otherwise allowed to result in a Change Order because of other restrictions in this Agreement.

9.3.4 Along with a proposed Change Order, Contractor shall also prepare and deliver to Owner a detailed written quote relating to the contemplated change or adjustment. Such quote to be submitted to Owner by Contractor pursuant to this Section 9.3 shall include the following: (i) the estimated price of such Change Order, including the Cost of maintaining the Project Schedule and meeting the Guaranteed Completion Date, (ii) the effect such change could be expected to have on the Project Schedule (including either the Mechanical or the Substantial Completion Dates) and (iii) the potential effect of such change on Contractor's ability to comply with any of its obligations hereunder, including the provision of Warranties and the Performance Guarantees. Contractor shall use all reasonable efforts to minimize any delay or increase in Costs. Such estimate shall be inclusive of all of Contractor's Costs and impacts, and shall be itemized as Owner may request. Owner shall review this estimate with Contractor for the purpose of determining whether to proceed with such change in the Work and, if so, for the purpose of attempting to reach agreement on the matters set forth therein, including a mutually acceptable adjustment to the Contract Price, the Project Schedule or the Guaranteed Completion Date, if any.

Contractor shall be solely responsible for the costs, including mark-up, incurred by Contractor and its Subcontractors in preparing any Change Order or any estimate in connection with a proposed Change Order. If such Change Order or estimate is prepared at Owner's request, Owner shall reimburse Contractor for such Costs (on a Time and Materials Basis).

9.3.5 Each quotation by Contractor under Section 9.3.4 shall set forth, to the maximum extent feasible and unless otherwise requested by Owner, the Cost of accelerating the Work and adjusting the Project Schedule so that there shall be no delay in the Project Schedule or the Guaranteed Completion Date, or shall state that such acceleration is not feasible.

9.3.6 If the Parties reach agreement on the matters listed in Contractor's detailed written quote, Owner shall issue an amendment to this Agreement which reflects the nature of such agreement to amend (a "**Change Order**"). Such Change Order shall contain and any all adjustments to the Contract Price, the Project Schedule, the Guaranteed Completion Date, and any other terms of this Agreement requiring adjustment to reflect the change agreed upon. The execution of a Change Order shall constitute a waiver of Claims by Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of Owner.

9.4 Constructive Change Orders

Contractor shall notify Owner within fourteen (14) days if it believes any written instruction by Owner, including any change in the policies or regulations referenced in Section 4.15, is not in compliance with this Agreement or otherwise changes this Agreement in a manner which should give rise to an equitable adjustment of the Contract Price, the Project Schedule or the Guaranteed Completion Date hereunder (a "**Constructive Change Order**"), and the Parties shall otherwise follow the process for a Change Order described in Section 9.3.

9.5 Disputes with Respect to Change Orders

Any dispute with regard to a proposed Change Order shall be resolved pursuant to the provisions of Article 29; provided that in the event of a dispute, Owner shall have the right to direct Contractor to proceed with a Change Order through a Construction Change Directive pending resolution of the dispute.

9.6 Construction Change Directives

9.6.1 A "Construction Change Directive" is a written order prepared and signed by Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price, the Guaranteed Completion Date, or Project Schedule, or both. Owner may by Construction Change Directive, without invalidating this Agreement, order changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, with the Contract Price, the Guaranteed Completion Date, and the Project Schedule being adjusted accordingly. Owner's use of a Construction Change Directive does not constitute agreement that the directive constitutes a change in the Work, the Contract Price, the Guaranteed Completion Date, or the Project Schedule.

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

9.6.3 If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods as mutually agreed by Owner and Contractor:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices stated in this Agreement or subsequently agreed upon;
3. Cost to be proposed by Owner and determined in a manner agreed upon by the Parties (with or without a cost limitation) and a mutually acceptable fixed or percentage fee; or
4. As provided in Section 9.6.7.

9.6.4 If unit prices are stated in this Agreement or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices but not the Project schedule, the Guaranteed Completion Date, or any other portion of the Contract Price shall be equitably adjusted.

- 9.6.5 Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the directed Work involved. As soon as possible, and within seven (7) days of receipt, Contractor shall advise Owner in writing of Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price, the Guaranteed Completion Date, or Project Schedule. Contractor's response shall specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, Contractor shall conclusively be deemed to have accepted Owner's adjustment. Contractor's disagreement shall not relieve Contractor of its obligation to comply promptly with any written notice issued by Owner. The adjustment shall then be determined by Owner in accordance with the provisions of this Agreement. The ultimate adjustment shall not exceed the amount of Contractor's proposed adjustment.
- 9.6.6 A Construction Change Directive signed by Contractor indicates Contractor's agreement therewith, including any adjustment in the Contract Price, the Guaranteed Completion Date, and Project Schedule or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.
- 9.6.7 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Price, or if Cost is to be determined under Section 9.6.3.3, Contractor shall provide a not-to-exceed price for the Construction Change Directive Work within fourteen (14) days of receipt of the Construction Change Directive, and Contractor shall keep and present, itemized in the categories of Section 9.7 and in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of Costs, including labor, Contractor's Construction Equipment, material and Subcontract Costs. Labor, Contractor's Construction Equipment and materials shall be itemized in the manner described in Section 9.7. Approval may not be given without such itemization. Failure to provide initial data within twenty-one (21) days of Owner's request shall constitute waiver of any Claim for changes in the Contract Price, the Guaranteed Completion Date, or Project Schedule. The total Cost of any change, including a Claim under Article 29, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 29), of the items in Section 9.7. The Owner may communicate directly with Subcontractors of any tier concerning Costs of any Work included in a Construction Change Directive. If Contractor disagrees with the method or the adjustment in the Project Schedule or the Guaranteed Completion Date, any adjustment shall be limited to the change in the actual critical path of Contractor's construction schedule directly caused thereby.
- 9.6.8 The amount of credit to be allowed by Contractor to Owner for a deletion or change that results in a net decrease in the Contract Price shall be the largest of (1) the reasonable and prevailing value of the deletion or change or (2) the line item value in the Schedule of Values, or (3) the actual net Cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 9.6.9 Pending final determination of the total Cost of a Construction Change Directive to Owner, and provided that the Work to be performed under the Construction Change Directive is complete and any reservations of rights in respect to the Construction Change Directive have been signed by Owner, Contractor may request payment for the undisputed Cost of the Work completed under the Construction Change Directive in Applications for Payment.
- 9.6.10 When Owner and Contractor agree with a determination made by Owner concerning the adjustments in the Contract Price, the Guaranteed Completion Date, and Project Schedule, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and will be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

9.7 Cost Components

To the extent not resolved on an agreed lump sum basis, the total Cost of any Change Order or of any other increase or decrease in the Contract Price, including a Claim or request for equitable adjustment, or the Cost otherwise referenced in this Agreement shall be calculated in accordance with Attachment O.

9.8 No Change Without Change Order

Except as set forth in Section 9.5, in no event shall Contractor undertake or be obliged to undertake a change in the Work until it has received a Change Order or a Construction Change Directive signed by Owner. No change in the Work, the Project Schedule, the Guaranteed Completion Date, the Performance Guarantees, the Contract Price, or any other obligation of Contractor hereunder shall be made unless specifically agreed to in writing by Owner through a Change Order or Construction Change Directive as set forth in this Article 9.

ARTICLE 10: TIME FOR PERFORMANCE AND SCHEDULE

10.1 Time for Completion

10.1.1 The Work shall be carried out in accordance with the Project Schedule.

10.1.2 Subject to Article 9 and Sections 11.3 and 14.4, Contractor guarantees that the Date for Mechanical Completion of the Facility (the "**Guaranteed Completion Date**") shall occur no later than the date that is 24 months from the date Contractor is provided unrestricted access to the Facility to the extent required to commence construction of the tank foundation as such date is defined in Attachment C ("Tank Access Date"), provided Contractor shall be entitled to a Change Order in the event the Tank Access Date is delayed by more than 2 months.

10.1.3 Contractor shall use commercially reasonable efforts to endeavor to achieve Mechanical Completion by the date set forth in the Project Schedule, the Parties recognizing that such completion date may be adjusted as provided in this Agreement, to the extent consistent with the other requirements of the Project Schedule, including the Guaranteed Completion Date.

10.1.4 Contractor shall be entitled to a Change Order in respect of the loss or the use of any float time, including time not on the critical path or time between the Contractor's anticipated completion dates and contractually required completion dates, whether or not the float time is described as such on the Project Schedule.

10.2 Failure to Mitigate

If after an event has caused Contractor to suspend or delay performance of the Work under the provisions of this Agreement (other than in accordance with Article 11 or an Owner Delay), Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the cause thereof or its direct or indirect effects, Owner may, in its sole discretion and after five (5) days written notice to Contractor (and Contractor's failure to proceed to take action in response to such notice), and at Contractor's sole cost, including mark-up, expense, and liability, initiate such reasonable measures as will be designed to remove or relieve such event or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work.

10.3 Acceleration of Work

Owner shall have the right, upon written notice to Contractor, to direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work, whether or not the Work is progressing without delay in accordance with the Project Schedule. Contractor agrees to use all commercially reasonable efforts to perform such acceleration. Such acceleration shall be

deemed to be a Constructive Change Order, and Contractor shall have the right to be reimbursed for its increased Costs pursuant to the procedures set forth in Article 9, unless the Contractor was responsible for the delay that caused the Owner to direct the acceleration. Contractor shall promptly provide a plan for such acceleration, including Contractor's recommendations for the most effective and economical plan for acceleration.

ARTICLE 11: SUSPENSION OF THE WORK

11.1 General

Owner may at any time or from time to time, and for any reason, suspend performance of the Work or any portion thereof by giving written notice to Contractor (a "**Suspension Notice**"). Contractor shall thereafter take all reasonable measures to implement such suspension but may complete such items of Work which would be unsafe or imprudent to immediately suspend. Such suspension shall continue for the period (the "**Suspension Period**") specified in the Suspension Notice. At any time after the effective date of the suspension, Owner may require Contractor to resume performance of the Work.

11.2 Contractor's Right of Suspension

In the event Owner fails to make a payment required under Article 13, Contractor shall have a right to suspend performance of the Work by delivering a Suspension Notice to Owner, provided, that (i) such payment default has continued for a period of fifteen (15) Business Days beyond the payment due date, (ii) Owner shall have failed to cure such default within ten (10) Business Days after receipt from Contractor of a Suspension Notice, (iii) such default is in respect of a payment amount that is not in good faith dispute, and (iv) the failure by Owner to make such payment is not an exercise by Owner of any of its rights under this Agreement. The Suspension Period for any suspension under this Section 11.2 shall terminate upon receipt by Contractor of the payment referred to in the Suspension Notice, at which time Contractor shall promptly recommence performance of the Work.

11.3 Extension of Time

In the event of any suspension under this Article 11, the Project Schedule, the Guaranteed Completion Date and any other schedule affected by such suspension shall be subject to adjustment to account for the period reasonably necessary to make up for the Suspension Period, pursuant to the procedures set forth in Article 9.

11.4 Compensation to Contractor

If the Work is suspended pursuant to this Article 11, Owner shall compensate Contractor, in accordance with the procedures set forth in Article 9, for those Costs that are (i) reasonably attributable to a suspension of any items of Work or portions thereof, including Contractor's Costs for storage, shipping, maintenance, preservation, demobilization, and remobilization, as applicable, and (ii) documented by Contractor. All claims by Contractor for compensation under this Article 11 must be made in accordance with Section 9.4 after the Suspension Period has ended and the Work has been either terminated or resumed. Payments by Owner under this Article 11 shall be made in accordance with Article 13. If the period of one or more suspensions by Owner of the Work pursuant to this Article 11 exceeds one hundred eighty (180) days in the aggregate, Contractor, in its sole discretion, may elect to terminate this Agreement by thirty (30) days prior notice to Owner; provided, that if Owner discontinues such suspension during such thirty (30) day period, Contractor shall resume such Work as provided in this Section 11.4, and Owner thereupon shall have no further right to suspend the Work under this Article 11. If Contractor terminates this Agreement pursuant to this Article 11, Contractor shall be entitled to payment calculated in accordance with Section 16.1 of this Agreement in the same manner as if Owner issued a Notice of Termination pursuant to Section 16.1.

11.5 Compensation for Work Performed Prior to Suspension

Nothing in this Article 11 shall relieve Owner of its obligation to pay for Milestones achieved, whether prior to or subsequent to suspension, in accordance with Article 13. Further, if suspension of the Work

continues for a period in excess of fifteen (15) days, Owner shall pay to Contractor a *pro rata* payment based on the applicable Milestones for the Work performed relative to such Milestones and for which Contractor has not already been paid.

ARTICLE 12: COMPLETION

12.1 Completion Certificates

Owner shall review and accept or reject each Completion Certificate issued by Contractor as provided in this Article 12.

- 12.1.1 Within fourteen (14) days after receipt of any Completion Certificate, Owner shall provide written notice to Contractor accepting or rejecting such Completion Certificate. A certificate will be deemed approved if Owner neither approves nor rejects such certificate by the date fourteen (14) days after such receipt.
- 12.1.2 Owner shall not unreasonably withhold acceptance of a Completion Certificate. If Owner rejects the Certificate, Owner will specifically state its reasons. Contractor shall take all corrective action as identified by Owner, and submit a new Completion Certificate to Owner in accordance with the procedures set forth in this Section 12.1. If Contractor disagrees with the reasons for the rejection, Contractor may refer the dispute for resolution in accordance with Article 29, but shall during the pendency of such dispute continue to take all corrective action as identified by Owner.

12.2 Mechanical Completion

12.2.1 Mechanical Completion Certificate.

Mechanical Completion shall be achieved on the Certificate Acceptance Date for the Facility when the following has occurred with respect to the Facility, and Contractor shall submit to Owner a Mechanical Completion Certificate for the Facility:

- (i) Contractor has complied with all provisions of this Agreement relating to the installation of all necessary components and systems of the Facility, and the Facility is mechanically and electrically complete (except for completion of Punchlist Items);
- (ii) such components and systems have been permanently connected to other relevant components and systems of the Facility with piping, wiring, controls and safety systems, and have been permanently connected to the applicable interface points and all applicable protective Equipment has been installed, and is operating;
- (iii) such components and systems have been cleaned, checked, and lubricated, and are ready for, Start-up, initial operation, adjustment and testing and may be so operated safely as set forth in Attachment B;
- (iv) all Equipment and other components and systems of the Facility have been pre-commissioned and have passed all appropriate test requirements;
- (v) all utilities and control systems are pre-commissioned and have passed all appropriate testing requirements;
- (vi) Contractor has remedied, to Owner's reasonable satisfaction, any Defects in the Facility identified by Owner or Contractor other than those Defects (A) that do not preclude the Facility or any portion thereof from operating or functioning as the Facility or such portion thereof was designed and intended to operate, and (B) the absence of which would not create any occupational, safety, or security hazard, or environmental hazard, and would not result in the Facility being in violation of any applicable Law; and

(vii) the Facility otherwise is ready for Feed Stock necessary for commissioning of the Facility.

12.2.2 Effect of Mechanical Completion.

(a) On the Mechanical Completion Date of the Facility, Contractor's Warranty with respect to the Facility shall begin as required by Article 8 ("**Warranty**"). Upon Mechanical Completion, the care, custody and control of the Facility shall transfer from Contractor to Owner, Owner shall take possession of the Facility, and Owner thereafter shall be solely responsible for its operation and maintenance.

(b) Solely for purposes of determining whether Contractor has met its obligation to achieve Mechanical Completion of the Facility on or prior to the Guaranteed Completion Date, and of determining Contractor's liability for Delay Liquidated Damages, if any, Mechanical Completion of the Facility shall be deemed to have occurred as of the Certificate Receipt Date for the Mechanical Completion Certificate for the Facility.

12.2.3 Notice of Feed Stock Ready Date.

Contractor shall coordinate Start-up of the Facility with Owner to facilitate Owner's scheduling to deliver Feed Stock to the Facility at or about the time the Facility is expected to be Ready for Feed Stock and to commence the Acceptance Tests, as contemplated by the Project Schedule and the Acceptance Test Procedures. Contractor shall notify Owner at least sixty (60) days prior to the date that Contractor expects the Facility to be Ready for Feed Stock (the "**Feed Stock Ready Date**").

Within thirty (30) days of receipt of such notice from Contractor, Owner shall notify Contractor of a date, occurring on or within seven (7) days after the Feed Stock Ready Date (the "**Feed Stock Supply Period**"), on which Owner expects to have Feed Stock available at the Facility (the "**Feed Stock Supply Date**"). Subject to Section 12.2.2(b), Owner shall have the right to adjust the actual Feed Stock Supply Date within the Feed Stock Supply Period, on ten (10) days' notice to Contractor. Contractor shall notify Owner immediately of any event or circumstance that is known (or reasonably should be known) to Contractor that reasonably could be expected to alter the date the Facility will be Ready for Feed Stock, and of any rescheduling of the Feed Stock Ready Date and shall provide Owner with a written explanation of such event or circumstance or rescheduling, together with such supporting documentation as Owner reasonably may request.

12.2.4 Effect of Ready for Feed Stock.

The Facility shall be Mechanically Complete and ready for Feed Stock upon satisfaction of each of the conditions set forth in Section 12.2.1 ("**Mechanical Completion**"), which shall be deemed to have occurred upon and effective as of the date specified in the Owner-accepted Certificate of Mechanical Completion for the Facility. On such Certificate Acceptance Date, Contractor shall continue the Work and promptly shall commence the Commissioning, Start Up and Acceptance Tests in accordance with Section 7.2.

12.3 Substantial Completion

12.3.1 Substantial Completion Certificate. Substantial Completion shall be achieved only for the Facility as a whole. When each of the following has occurred with respect to the Facility, Contractor shall submit to Owner a Substantial Completion Certificate for the Facility, so certifying:

(i) Contractor has complied with all provisions of this Agreement relating to the installation of all necessary components and systems of the Facility, and the Facility is mechanically and electrically complete (except for completion of Punchlist Items);

(ii) such components and systems have been connected to other relevant components and systems of the Facility with piping, wiring, controls and safety systems, and have been connected to the applicable interface points and all applicable protective Equipment has been installed and is operating;

(iii) Contractor has designed, procured, constructed, completed, tested, and Started-up the Facility and the Facility is operating in accordance with this Agreement, except to the extent to be tested in the Acceptance Tests, if any, to be performed after Substantial Completion as contemplated by Section 7.2;

(iv) Owner has received results demonstrating the successful completion of the Acceptance Tests (other than with respect to Acceptance Tests that may be performed after Substantial Completion) and that the Facility has met or exceeded each of the Performance Guarantees;

(v) Owner has received from Contractor all Governmental Approvals required to be obtained by Contractor with respect to the Facility and such Governmental Approvals are, if applicable, in full force and effect;

(vi) Owner has received all specifications, test data, and other technical information necessary for Owner to operate and maintain the Facility;

(vii) Owner has received the Operating Manual for the Facility, and all marked-up "as-built" drawings, spare parts lists, special tools lists, and instruction books necessary to operate the Facility in a safe, efficient and effective manner and in accordance with this Agreement and all applicable Laws;

(viii) Contractor has delivered to Owner all special tools obtained as part of the Work with respect to the Facility;

(ix) Contractor has completed the training program required by Section 4.10;

(x) Contractor has completed the Punchlist Items and has provided the Subcontractor warranty lists and copies required by Section 8.2;

(xi) Contractor has removed all Temporary Construction Facilities, except for those necessary to perform Punchlist work and restored the Site thereof, to the extent required by Section 4.5.2; and

(xii) Contractor has provided the final Punchlist relating to the Facility as reviewed and approved by Owner in accordance with Section 12.4, and Owner has received or retained an amount equal to twice its estimated cost of such Punchlist Items as provided therein.

12.3.2 Effect of Substantial Completion.

The Facility shall have achieved substantial completion upon satisfaction of each of the applicable conditions set forth in Section 12.3.1 ("**Substantial Completion**"), which shall be deemed to have occurred upon and effective as of the date specified in the Owner-accepted Certificate of Substantial Completion with respect to the Facility (the "**Substantial Completion Date**").

12.4 **Punchlist**

12.4.1 Contractor shall prepare and submit a draft Punchlist to Owner no later than fifteen (15) days before the anticipated Certificate Receipt Date for Mechanical Completion of the Facility, with the estimated Cost and time to complete or correct each Punchlist Item. Owner shall notify Contractor within ten (10) Business Days after receipt of each such draft Punchlist that it accepts such draft Punchlist and estimate, or if rejected, shall state its reasons for

disagreement in reasonable detail. Owner's acceptance or rejection of a draft Punchlist shall not relieve Contractor of its obligation to complete or correct all Punchlist Items or its other obligations under this Agreement. The Parties shall thereafter in good faith attempt to agree on each such Punchlist Item as expeditiously as possible, but in no event shall Contractor submit a Substantial Completion Certificate prior to agreement between Contractor and Owner on the Punchlist.

12.4.2 Not Used.

12.4.3 Owner shall provide Contractor access to the Facility, as applicable, following the Mechanical Completion Date for the Facility as reasonable and necessary for Contractor to complete the Punchlist Items and achieve Final Completion in accordance with this Agreement; provided that Contractor shall minimize interference with Owner's operation and maintenance of the Facility.

12.4.4 Notwithstanding any other provision of this Agreement, if the completion of any Punchlist Items requires that the Facility be shut down or its output or capacity curtailed, Owner shall have the option of completing such Punchlist Items itself and Contractor shall pay for the reasonable cost, including mark-up, of completing such Punchlist Items; provided, that Contractor shall not be obliged to pay an amount with respect to any Punchlist Item exceeding the lesser of (i) Owner's actual cost to complete such Punchlist Item, or (ii) the mutually agreed cost estimate set forth on the Punchlist with respect to such Punchlist Item, (iii) a reasonable amount to complete such Punchlist Item. If Contractor fails to make such payment to Owner within fifteen (15) days of receiving Owner's request for such payment, the provisions of Section 13.5 shall apply and Owner may pay such costs out of such retained amount.

12.5 Final Completion

12.5.1 Final Completion Certificate. Final Completion shall be achieved only for the Facility as a whole. When each of the following has occurred with respect to the Facility, Contractor shall submit to Owner a Final Completion Certificate for the Facility certifying:

(i) Contractor has completed final cleanup and final painting of the Facility and all other Punchlist Items for the Facility and Owner has accepted the same in writing. Owner at its sole discretion may approve the completion of Punchlist Items after the date of Final Completion. If any such Punchlist Items remain outstanding at the Final Completion Deadline for the Facility (other than as provided in Section 12.4.4), Owner shall have the right to complete such Punchlist Items itself (or cause them to be completed), and Contractor shall pay Owner a reasonable amount for completing such Punchlist Items; provided that the Contractor shall not be obliged to pay an amount with respect to such Punchlist Items exceeding the lesser of (A) Owner's actual cost to complete such Punchlist Item, or (B) the mutually agreed amount of the Cost estimate set forth on the Punchlist with respect to such Punchlist Item, or (C) a reasonable amount to complete such Punchlist Item. If Contractor fails to make such payment to Owner within fifteen (15) days of receiving Owner's request, Owner may pay such costs out of such retained amount. Each month after the Substantial Completion Date for the Facility, Owner shall release payments to Contractor for any amounts retained by Owner for any holdback items pursuant to Section 13.5;

(ii) Contractor has removed all Contractors' and Subcontractors' personnel, materials, supplies, Contractor's Construction Equipment, waste materials, and rubbish from the portion of the Site;

(iii) Contractor has removed all Temporary Construction Facilities except those required to perform any remaining Punchlist items, and restored the site thereof;

(iv) Owner has received from Contractor (A) any waivers of liens relating to the Work on the Facility which were not previously delivered to Owner in form and substance reasonably acceptable to Owner. (Contractor shall have the right to submit a bond or bonds in lieu thereof, as provided in Section 13.3.3), and (B) a final certificate of Contractor that all requested waivers of all liens by Contractor, Subcontractors, and vendors relating to such Work have been

obtained by Contractor and delivered to Owner (or, if necessary, a bond delivered in lieu thereof) except, in each case, with respect to Work to be performed after the Final Completion Date as expressly provided herein;

(v) Contractor has provided to Owner all drawings (including final "as-built" drawings), manuals, Governmental Approvals, lists and other materials required under this Agreement with respect to the Facility;

(vi) Contractor has corrected all Defects in the Work relating to the Facility that may have occurred or become apparent since Substantial Completion of the Facility or, if the correction of any such Defects cannot reasonably have been completed in the period of time since such Substantial Completion Date, Contractor has commenced and diligently pursued the correction of such Defects;

(vii) Contractor has paid all Performance Liquidated Damages, other liquidated damages and any other amounts due and owing to Owner under this Agreement with respect to the Facility; provided that if Contractor has disputed in good faith pursuant to Section 13.5, Final Completion shall be delayed until such dispute is resolved;

(viii) Contractor has performed all its other obligations then required to be performed under this Agreement with respect to the Facility; and

(ix) Contractor has provided to Owner all Governmental Approvals required to be obtained by Contractor with respect to the Facility and such Governmental Approvals are, if applicable, in full force and effect.

- 12.5.2 Effect of Final Completion. The Facility shall have achieved final completion upon satisfaction of each of the applicable conditions set forth in Section 12.5.1 ("**Final Completion**"), which shall be deemed to have occurred upon and effective as of the date specified in the Owner-accepted Certificate of Final Completion with respect to the Facility.

ARTICLE 13: PAYMENT

13.1 Contract Price

- 13.1.1 Contract Price. As full compensation and consideration for the full and complete performance of all of the Work and all of Contractor's other obligations under this Agreement and all costs, including mark-up, in connection therewith, Owner shall pay to Contractor, and Contractor shall accept, a lump-sum amount as specified in Attachment N (the "Contract Price").
- 13.1.2 All Items of Work Included. The Contract Price includes all Work, including all Equipment, Materials and Supplies, Taxes, tools, special tools, Contractor's Construction Equipment, parts, chemicals and lubricants, drawings, manuals, documents, labor, transportation, Governmental Approvals, intellectual property rights, and other items or services to be provided by Contractor or its Subcontractors hereunder. Without limiting the generality of the preceding sentence, the Contract Price includes (i) all costs, including mark-up, of Equipment, Materials and Supplies, Contractor's Construction Equipment, labor and other such items and services related to the Work, and (ii) all remedial Work required to be performed with respect to Contractor's Warranty.

13.2 Milestone Payment Schedule

- 13.2.1 Milestone Payment Schedule. Attachment H sets forth the schedule for payment of the Contract Price by Owner (the "**Milestone Payment Schedule**") which, subject to the terms of this Agreement, shall be paid against the achievement of major elements of the Work ("**Milestones**") to be identified in the Milestone Payment Schedule.

- 13.2.2 Final Completion Payment. Upon Final Completion of the Facility, Contractor shall submit a

statement (the "**Final Request for Payment**") summarizing and reconciling all previous invoices, payments and Change Orders, and including all changes to the Contract Price, any undisputed Liquidated Damages not paid, and a list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the Contract Price, shall be deemed to have been waived and abandoned. Owner shall pay Contractor the remaining amount of the Contract Price minus amounts then in dispute. The Final Request for Payment shall not be made until Contractor delivers to Owner a complete release from Contractor and all Subcontractors of all Claims and liens arising out of this Agreement substantially in the form of Release included in Attachment L (other than those disputed by Contractor and as to which Contractor shall have furnished a bond satisfactory to Owner), and an affidavit that so far as Contractor has knowledge or information the release includes and covers all portions of the Work for which a Claim or lien could be filed.

13.3 Request for Payment

- 13.3.1 At least five (5) Business Days prior to each invoice date set forth in the Milestone Payment Schedule, Contractor shall submit to Owner a draft invoice in the amount of the corresponding payment set forth in the Milestone Payment Schedule. This shall not constitute a Payment Request. Contractor and Owner shall meet within the next five (5) Business Days and confer regarding the current progress of the Work and the amount of payment to which Contractor is entitled. Owner may request Contractor to provide data substantiating Contractor's right to payment as Owner may reasonably require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records. Contractor shall not be entitled to make a Payment Request, nor is any payment due Contractor, until such data is furnished. Within five (5) Business Days after Contractor and Owner have met and conferred regarding the updated draft Request, and Contractor has furnished all progress information required and all data requested by Owner, Contractor has submitted current meeting minutes, as-built drawings and commissioning logs (if requested) and an updated Project Schedule, Contractor may submit a payment request ("**Request for Payment**"). Each Request for Payment shall set forth each Milestone completed prior to the date of such Request for Payment or to be completed prior to the due date for such payment set forth on the Milestone Payment Schedule, and the balance of the Contract Price as of the time of such Request for Payment. In addition to each such Milestone completed or to be completed, each Request for Payment shall include (i) the Costs incurred by Contractor for Work performed on a Time and Materials Basis (to the extent permitted by the express terms of this Agreement), separately stating the amount of labor costs incurred for (x) construction services, (y) installation services, and (z) engineering services included in such Request for Payment, and (ii) the vendor's invoice for Equipment or Materials and Supplies furnished by Contractor or its Subcontractor.

Each Request for Payment shall be accompanied by such substantiating data as may be required in Attachment H. Contractor shall provide such substantiating data as Owner reasonably may request to substantiate that such Milestones have been completed. The Request shall be accompanied by lien releases on a form furnished or approved by Owner from Contractor and each Subcontractor for whose Work Owner paid Contractor for the prior month. The invoice and substantiating data shall be verified by Owner, who shall either approve the invoice in time for payment to be made by the due date shown on the Milestone Payment Schedule or specify in reasonable detail in what respects the Payment is not justified. Upon approval of an invoice by Owner, Owner shall pay Contractor the invoiced amount by wire transfer to a bank account designated by notice by Contractor on or before the due date set forth in the Milestone invoice.

- 13.3.2 It is understood and agreed by Contractor and Owner that any line item in the Request for Payment which is nonconforming, incomplete or inaccurate or which lacks the detail, specificity or supporting documentation required by this Section 13.3 shall not, to the extent of such deficiency, constitute a valid and proper Request for Payment, and Owner shall not have any obligation to make payment of the line item amounts in respect of which such Request for Payment was deficient until Contractor shall have resubmitted said Request for Payment, to the

extent of such deficiency, in proper form. All other line items in the Request for Payment which meet the requirements of this Section 13.3 will be paid in full in the time frame included in this Agreement. Contractor specifically agrees that it shall not include in any Request for Payment sums attributable to Work which Owner or Contractor has refused to accept (or Owner has directed Contractor to refuse to accept) or which otherwise constitute or relate to applications for payments, billings or invoices of Subcontractors which Contractor does not intend to pay.

13.3.3 In each Request for Payment, Contractor:

(a) shall certify that such Request for Payment represents the amount to which Contractor is entitled pursuant to the terms of this Agreement and shall also certify as follows:

There are no known mechanics' or material men's liens or other such Claims or encumbrances outstanding at the date of this Request for Payment; all due and payable bills with respect to the Work (other than those disputed by Contractor and as to which Contractor shall have furnished a bond satisfactory to Owner) have been paid to date or are included in the amount requested in the current application, and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or material men's liens on the Facility or the Work except as described therein; the Work is current on the Project Schedule, unless otherwise noted therein, and releases from all Subcontractors have been obtained in such form as to constitute an effective release of lien (corresponding to payments received by them) under the applicable governing laws;

(b) shall submit to Owner lien waivers and releases from Contractor and each Subcontractor substantially in the form of lien waiver included in Attachment H; and

(c) shall submit to Owner copies of proof of payment paid by Contractor in connection with the Work for which it paid applicable sales or use Taxes.

13.4 Interest

Except where a different rate of interest is provided in this Agreement, amounts not paid by either Party to the other when due hereunder shall bear interest from the date payment was due to the date of payment at a rate per annum (the "Base Rate") equal to LIBOR plus two percent, provided, that in no event shall interest be payable for amounts in dispute (except to the extent such amount is liquidated and ultimately is determined to have been properly due and payable, in which case such interest shall accrue from the date due to the date of payment) or for amounts withheld in accordance with the express provisions of this Agreement and in the event that the Base Rate would otherwise exceed the maximum rate permitted by applicable Law, the Base Rate automatically shall be reduced to the highest non- usurious rate permitted by applicable Law. Payment of such interest and acceptance thereof shall not constitute a waiver of the requirement for prompt payment in accordance with this Agreement. Nothing in this Section 13.4 shall be deemed to excuse any failure by either Party to make a payment required hereunder or to limit any other remedy that the other Party may have for such failure to make a payment.

13.5 Payment Disputes

13.5.1 In case of a dispute with respect to a portion but not all of any payment amount, Owner or Contractor, as applicable, shall pay the undisputed portion promptly in accordance with the provisions of this Agreement. Contractor's or Owner's acceptance of partial payment shall not be deemed to constitute a waiver of the right to receive amounts which are then in dispute and Contractor and Owner shall use their best efforts to resolve all disputed amounts as soon as practicable. Any liquidated amounts not paid when due (including disputed amounts which are subsequently determined to have been properly due) or any amounts paid which are subsequently determined not to have been properly due shall bear interest at the Base Rate.

13.5.2 In the event of a dispute between the Parties regarding any entitlement to a payment

hereunder, either Party shall have the right to refer the dispute to resolution in accordance with Article 29.

Pending resolution of any such dispute, each Party shall continue its performance in accordance with this Agreement.

13.6 Payment Not Acceptance of Work

No payment, nor any partial or entire use of the Work by Owner, shall constitute an acceptance of any Work by Owner.

13.7 Release of Liability

Subject to the last sentence of this Section 13.7, acceptance by Contractor of the Final Payment shall constitute a release by Contractor of Owner and its successors and assigns and every officer and agent thereof from all liens (whether statutory or otherwise, and including mechanics' or suppliers' liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Owner, or any other Person relating to or affecting this Agreement, except for any claims arising under Article 28, any claims with respect to the payment by Contractor of Taxes not included in the Contract Price and any claims which are the subject of a written request for resolution delivered by Contractor prior to the Final Payment containing reasonable details regarding such dispute. In addition, nothing in this Section 13.7 shall constitute a release by Contractor of

- (i) any claims or liability (other than claims for the Contract Price) that Contractor lists in the Final Request for Payment,
- (ii) any covenants or obligations to be performed by Owner after the date of the Final Request for Payment, or
- (iii) any defenses to claims which may be asserted by Owner.

13.8 Withholding

Should any Law or any Governmental Authority require withholding of any Taxes from any payments made by Owner to Contractor, any Subcontractor, or any other Person with respect to the Work, Owner shall be entitled to comply with such requirement to withhold and remit such withholdings to the proper Governmental Authorities, and such withholding shall be deemed part of the compensation paid to Contractor or such other Person. Contractor shall, and shall cause each such other Person to, complete, sign and return to Owner any forms regarding withholding or other taxpayer information which Owner requests from Contractor or such other Person.

ARTICLE 14: PERFORMANCE GUARANTEES AND LIQUIDATED DAMAGES

14.1 Performance Guarantees

Subject to Section 14.2, Contractor hereby guarantees that the Facility will meet the performance guarantees (the "**Performance Guarantees**"), as set forth in Attachment D and as demonstrated by the Performance Tests (as defined in Attachment D).

- 14.1.1 To attain Owner acceptance and qualify the Facility for Substantial Completion, Contractor guarantees that the Facility will achieve the minimum performance levels (the "**Performance Guarantees**") as set forth in Attachment D and as demonstrated by the Performance Tests.
- 14.1.2 To qualify the Facility for Final Completion, Contractor guarantees that the Facility will achieve the Performance Guarantees, as set forth in Attachment D and as demonstrated by the Performance Tests.

14.1.3 Owner's failure to provide Feed Stock in an adequate quantity within sixty (60) days of notification by Contractor that Performance Testing is ready to commence shall be deemed an Owner Delay.

14.2 Performance Liquidated Damages

14.2.1 In the event the Acceptance Tests demonstrate that the Facility fails to meet all applicable Performance Guarantees, then prior to submitting a Substantial Completion Certificate for the Facility, Contractor shall make any necessary adjustments, modifications, repairs and replacements to the Facility to correct the deficiencies in accordance with Attachment D. If Contractor has made vigorous, good-faith efforts to make any necessary adjustments, modifications, repairs and replacements to the Facility to correct the deficiencies, in the event the Performance Tests thereafter demonstrate that the Facility has not met the minimum applicable Performance Guarantees set forth in Attachment D, then Contractor shall have the option of paying to Owner as liquidated damages those amounts set forth in Attachment D as Owner's sole and exclusive remedy and Contractor's sole liability for such deficiency in performance.

14.3 Delay Liquidated Damages

14.3.1 If the Certificate Acceptance Date for Mechanical Completion of the Facility, as it may be adjusted under this Agreement, has not occurred by the Guaranteed Completion Date, Contractor shall pay to Owner liquidated damages ("**Delay Liquidated Damages**") in the amount per day for each day of delay after the Guaranteed Completion Date (subject to a Grace Period) until the Certificate Acceptance Date for Mechanical Completion of the Facility, in accordance with the following table:

Days of delay	Amount per Day
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Such Delay Liquidated Damages shall be cumulative for the interval set forth on such table.

14.3.2 Contractor shall accrue Delay Liquidated Damages until the earlier of (i) the Certificate Acceptance Date for Mechanical Completion of the Facility and (ii) the date on which the aggregate of all Delay Liquidated Damages paid by Contractor reaches a limit of [REDACTED] percent [REDACTED] of the Contract Price.

The payment of Delay Liquidated Damages to Owner constitutes Owner's sole and exclusive damages and Contractor's sole payment for such delay in achievement of the Certificate Acceptance Date for Mechanical Completion of the Facility by the Guaranteed Completion Date.

14.4 Liquidated Damages Not Penalty

The Parties acknowledge and agree that because of the unique nature of the Facility and the unavailability of a substitute facility, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Contractor's delay in achieving Mechanical Completion of the Work or failing to achieve the Performance Guarantees, including its failure (a) in the case of Delay Liquidated Damages, to achieve the Certificate Acceptance Date for

Mechanical Completion of the Facility by the Guaranteed Completion Date, or (b) to complete the Work so that the Facility meets the Performance Guarantees. It is understood and agreed by the Parties that (a) Owner shall be damaged by failure of Contractor to meet such obligations, (b) it would be impracticable or extremely difficult to fix the actual damages resulting there from, (c) any sums payable under this Article 14 are in the nature of liquidated damages, and not penalties, and are fair and reasonable, and (d) such payments represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by Contractor to either (a) in the case of Delay Liquidated Damages, achieve the Certificate Acceptance Date for Mechanical Completion of the Facility on or before the Guaranteed Completion Date, or (b) meet the Performance Guarantees; provided, that nothing in this Article 14 (including any liability for, or payment of, Delay Liquidated Damages or Performance Liquidated Damages) shall be construed to affect or limit Contractor's obligations to achieve Mechanical Completion of the Facility, and achieve the Performance Guarantees with respect to the Facility, and failure to make reasonable progress toward the achievement of either Mechanical Completion of the Facility or the Performance Guarantees with respect to the Facility shall constitute a default under this Agreement.

ARTICLE 15: FORCE MAJEURE

15.1 Events of Force Majeure

An "**Event of Force Majeure**" shall mean any unforeseeable circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance cannot be, or be caused to be, prevented, avoided or removed by such Party by due care or commercially reasonable efforts, (b) such event materially adversely affects the ability of such Party to perform its obligations under this Agreement, (c) such event is not the result of any failure of such Party to act reasonably or perform any of its obligations under this Agreement, and (d) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken in order to comply with this Article 15. The affected Party shall have a duty to mitigate the effects of any Event of Force Majeure.

15.2 Instances of Force Majeure

15.2.1 Subject to the provisions of Sections 15.1 and 15.3, and to the extent not caused by the affected Party, Events of Force Majeure shall include but not be limited to acts of war or the public enemy, whether war be declared or not; terrorism, public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations; power failures, earthquakes, hurricanes, tornadoes, named storms, floods, abnormal snowfalls or other natural calamities and acts of God; any unforeseen Change in Law affecting a Party, any contractor or subcontractor of a Party, or the Project; strikes or other labor disputes that are not applicable solely to the personnel of Contractor or a Subcontractor; and any stop-work order issued, or a similar exercise of authority, by a Governmental Authority as described in Section 4.3.5 to the extent not attributable to (i) the act or omission of the affected Party, (ii) a violation of Law (including failure to obtain or maintain required Governmental Approvals), or (iii) a breach of this Agreement by the Party, or by anyone for which it is responsible, claiming an Event of Force Majeure.

15.2.2 Adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time (based on historic climatic data), could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction, and that the adverse weather conditions would have caused the delay whether or not the Work was on schedule.

15.3 Events Not Excused

15.3.1 Events. Events of Force Majeure shall not include, and no Change Orders for Contractor's benefit will arise on account of:

(a) any of the following except to the extent such non-performance is caused by an event or circumstance that independently would be an Event of Force Majeure:

- (i) non-performance, delayed performance, or under-performance by any personnel, vendor, Supplier, or Subcontractor, including such performance under any agreement of Owner assigned to Contractor hereunder;
- (ii) non-payment of Taxes;
- (iii) customs procedures or changes in such procedures;
- (iv) delay in obtaining, or failure to obtain or maintain, any Governmental Approval not constituting a Change in Law;
- (v) non-compliance with Law;
- (vi) delay in, or failure to, import, transport to, or store or house at the Site all necessary tools, Contractor's Construction Equipment, Equipment, Materials and Supplies and personnel to perform the Work; or
- (vii) non-performance, delayed performance, or under-performance under this Agreement by Contractor caused by its failure to engage productive, properly skilled and qualified Subcontractors, to hire an adequate number of personnel or labor or to perform the Work and its obligations in an efficient manner; or

(b) normal seasonal unfavorable weather (other than hurricanes, tornadoes, named storms, floods or other natural calamities and acts of God), and other Site-related conditions not constituting Owner Site Risks.

15.3.2 Design and Construction Standards. For avoidance of doubt, the provision of this Article 15 shall not be deemed to excuse any failure by Contractor to design, procure, and construct the Facility in compliance with the standards set forth herein including with respect to wind speed, storm surge, flooding, seismic conditions, or other site conditions.

15.4 Notice of Force Majeure: Procedure

As soon as practicable following the date of commencement of any Event of Force Majeure, if either Party desires to invoke such Event of Force Majeure as a cause for delay in the performance of any obligation (other than the payment of money) hereunder, it shall notify the other Party of such date and the nature and expected duration of such Event of Force Majeure. As soon as practicable and in any event within the time periods for notification of a Change Order under Article 9 following the termination of such Event of Force Majeure, the Party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other Party reasonable written proof of the nature of such delay, its effect upon the time of its performance hereunder, and all other information required for a Change Order under Article 9. The Parties:

15.4.1 shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure by among other things recourse to alternate acceptable sources of services, Equipment and Materials and Supplies and Contractor's Construction Equipment, re-sequencing work, or working additional or weekend shifts; and

15.4.2 shall use all reasonable efforts to ensure resumption of normal performance of this Agreement after the termination of any Event of Force Majeure and shall perform their obligations hereunder to the maximum extent practicable and agreed between the Parties.

15.4.3 Contractor shall be entitled to recover the schedule impact but not the Cost of a Force Majeure

Event by a Change Order. The ability of any Party to recover the cost of a Force Majeure Event from an insurer is not affected by this Article 15.4.

15.5 Effect of Force Majeure

Neither Party shall be considered to be in default or in breach of its obligations under this Agreement (other than the payment of money) to the extent that performance of such obligations is prevented by any Events of Force Majeure which arise after the Effective Date.

In the event such Force Majeure event prevents performance of the Work for more than thirty (30) consecutive days then the Work shall be considered as suspended under Article 11 of this Agreement. In the event such period of extension exceeds one hundred eighty (180) consecutive days then either Party may terminate this Agreement, and Contractor shall be compensated according to the Milestone Schedule of Attachment H only for Work performed through the date of termination plus actual, verifiable, mitigated and reasonable demobilization Costs.

ARTICLE 16: DEFAULT AND TERMINATION

16.1 Termination for Convenience

- 16.1.1 Owner may in its sole discretion terminate the Work with or without cause at any time by giving written notice of termination to Contractor specifying the effective date of the termination ("**Notice of Termination**"). Immediately upon receipt of a Notice of Termination, Contractor shall stop performance of the terminated Work and shall promptly order and commence demobilization with regard to the Work, but shall complete (or, at Owner's direction, shall protect and preserve in a safe and prudent manner) such items of Work which would be unsafe or imprudent to immediately terminate. Upon termination for convenience by Owner, the Parties shall have the following rights, obligations and duties:
- 16.1.2 In case of termination of the Work for Owner's convenience in accordance with Section 16.1.1, Contractor shall receive as compensation for the Work performed through the date of termination, and as compensation in connection with and as a consequence of such termination, an amount equal to the difference between (a) the sum of (1) the total compensation due Contractor for Work performed through the date of termination, (2) Contractor's actual, reasonable and verifiable Costs for cancelling Subcontracts not assigned to Owner (provided the Parties shall use reasonable efforts to ensure cancellation of such Subcontracts on reasonable terms), (3) Contractor's actual, reasonable and verifiable demobilization Costs (provided Contractor shall use reasonable efforts to mitigate such Costs), and (4) a termination fee of \$250,000, and (b) the total amount of all payments made to Contractor by Owner for the Work through the date of such termination.
- 16.1.3 If payments made to Contractor prior to termination are less than the amount determined under Section 16.1.2, Owner shall pay the additional amount to Contractor. If payments already made to Contractor prior to termination are more than such amount, Contractor shall pay Owner the difference within five (5) Business Days. The amount due Contractor as provided in this Section 16.1.3 is the sole and exclusive liability of Owner and remedy of Contractor with respect to the payment of the Contract Price and the termination of the Work pursuant to this Section 16.1 and Owner shall have no further liability to Contractor in the event of any such termination for, and Contractor waives any right to, actual, incidental, consequential or other damages, notwithstanding the nature or amount of any actual damages which Contractor may have sustained. It is understood and agreed between Contractor and Owner that the loss to Contractor from a termination of the Work by Owner pursuant to Section 16.1 would be uncertain and impossible to determine with precision and that the provisions of this Section 16.1 establish agreed compensation to Contractor with respect to such termination and such provisions represent a fair and reasonable compensation due Contractor as a result of such termination.

- 16.1.4 All claims for payment by Contractor under this Section 16.1 must be made within the time periods for notification of a Change Order specified in Article 9 after the effective date of a termination hereunder, and shall be due and payable within Fifteen (15) days after the later of the receipt by Owner of a proper invoice therefor or the results of an audit as contemplated by Section 4.22.

16.2 Contractor Events of Default

Contractor shall be in default of its obligations under this Agreement should any of the following events or conditions (an "**Event of Contractor Default**") arise or exist:

- 16.2.1 Contractor or either Contractor Guarantor becomes insolvent, or generally does not pay its debts as they become due, or admits in writing to its inability to pay its debts, or makes an assignment for the benefit of creditors;
- 16.2.2 Any proceeding is instituted against Contractor or either Contractor Guarantor seeking to adjudicate Contractor or either Contractor Guarantor as a bankrupt or insolvent, or Contractor or either Contractor Guarantor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of the insolvency of Contractor or either Contractor Guarantor, or Contractor or either Contractor Guarantor files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization or winding up and, in the case of any such proceeding instituted against Contractor or either Contractor Guarantor (but not by Contractor or either Contractor Guarantor), such proceeding is not dismissed within sixty (60) days of such filing;
- 16.2.3 Contractor shall have assigned or transferred this Agreement or any right or interest herein except as expressly permitted by this Agreement or agreed to by Owner;
- 16.2.4 Contractor shall have materially defaulted in its performance under this Agreement in any material respect, including performance of the Work in breach of this Agreement, and such default continues for five (5) Business Days after notice thereof from Owner, or, if the remedy for such default cannot reasonably be completed within such period, Contractor shall have failed promptly to commence and diligently to pursue remedial action within such period and to conclude such action as soon as practicable, but in any event not more than thirty (30) days after such notice from Owner; provided, that such thirty (30) day period shall be extended to the extent Contractor, prior to the end of such thirty (30) day period, presents a reasonable remedial plan extending past such period that is approved by Owner (such approval not unreasonably to be withheld or delayed), and further provided that any such extension will not and does not extend the Guaranteed Completion Date;
- 16.2.5 Not Used;
- 16.2.6 Contractor disregards the instructions of Owner consistent with this Agreement, and such disregard continues for five (5) Business Days after notice from Owner;
- 16.2.7 Contractor fails, neglects, refuses or is unable at any time during the course of the performance of the Work, to procure or provide sufficient Materials and Supplies, Equipment, services, Contractor's Construction Equipment, or labor to perform the Work in accordance with this Agreement, and such failure, neglect, refusal or inability continues for five (5) Business Days after notice from Owner, or, if the remedy for such failure, neglect, refusal or inability cannot reasonably be completed within such period, Contractor shall have failed promptly to commence and diligently to pursue remedial action within such period and to conclude such action as soon as practicable, but in any event not more than thirty (30) days after such notice from Owner; provided that such thirty (30) day period shall be extended to the extent Contractor, prior to the end of such thirty (30) day period, presents a reasonable remedial plan extending past such period that is approved by Owner (such approval not unreasonably to be withheld or delayed) and such extension will not and does not extend the Guaranteed Completion Date;

- 16.2.8 Not used;
- 16.2.9 Contractor Guarantor shall be in default under the Guaranty and such default continues for ten (10) days after notice from Owner, or, if (i) the remedy for such default cannot reasonably be completed within such period, such Contractor Guarantor shall have failed promptly to commence and diligently to pursue remedial action within such period and conclude such action as soon as practicable, but in any event not more than thirty (30) days after such notice from Owner, or (ii) either Contractor Guaranty shall have been revoked, terminated or repudiated, or either Contractor Guarantor shall have asserted that its Contractor Guaranty is invalid;
- 16.2.10 Contractor fails to pay or cause to be paid any amount by the date five (5) Business Days after the date such payment has become due and payable by Contractor to Owner under this Agreement and such failure continues for thirty (30) days after notice from Owner; provided, that (i) such default is in respect of a payment amount that is not subject to a good-faith dispute, and (ii) the failure by Contractor to make such payment is not an exercise by Contractor of any of its rights under this Agreement;
- 16.2.11 Contractor disregards any applicable Law or Site restrictions, including those described in Section 4.11.2, the disregard of which may have a material adverse effect on Owner, its rights under this Agreement, the Work or the Facility, and such disregard continues for ten (10) Business Days after notice thereof from Owner;
- 16.2.12 Contractor abandons the Work, which shall mean Contractor vacates the Site with the manifest intention not to return, (except due to a suspension of the Work permitted under this Agreement) for a period of more than five (5) days after notice from Owner;
- 16.2.13 Contractor fails to make a substantial start on performance of the Work within thirty (30) days of the Effective Date;
- 16.2.14 Contractor fails, neglects, refuses or is unable at any time during the course of the performance of the Work, to obtain or maintain the insurance required to be obtained and maintained by Contractor and such failure, neglect, refusal or inability continues for the shorter of (a) a period of thirty (30) days, or (b) a period of five (5) Business Days after notice from Owner; or
- 16.2.15 Any other act or omission by or attributable to Contractor that constitutes a material breach of this Agreement.

16.3 Owner's Remedies: Replacement Contractor

- 16.3.1 Owner's Remedies. Except for any instance that this Agreement specifically provides that a remedy is the sole and exclusive remedy for a specifically described default or breach (including any such provision in Article 8 and Article 14 and without limiting Section 4.1.3), if an Event of Contractor Default shall have occurred and be continuing: (i) Owner shall have the right to terminate this Agreement by delivery of a Notice of Termination to Contractor, and (ii) in addition to Owner's termination rights, Owner shall have the right, with or without terminating this Agreement, subject to the limitations (to the extent applicable) set forth in Article 14 and Article 27, to pursue any rights and remedies that may be available to Owner at law or in equity or as otherwise provided in this Agreement. For avoidance of doubt, and notwithstanding any restriction in the nature of sole or exclusive liability or remedy set forth in Section 4.1.3, Contractor's liability and Owner's remedies with respect to a failure to make good either any Defect or any other breach of the Warranty, as contemplated by Section 16.2.4, shall not be limited by the provisions of Section 4.1.3 upon such failure.
- 16.3.2 Replacement Contractor. Owner may, but is not obligated to, employ any other Person (sometimes hereinafter referred to as "**Replacement Contractor**") to finish the Work in accordance with the terms of this Agreement (subject to all obligations under any and all

Subcontracts as may be assigned to such Replacement Contractor pursuant to Section 16.3.3) by whatever method that Owner may deem expedient. Upon a termination pursuant to Section 16.3.1, Owner shall be required to reasonably mitigate the cost for completion of such Work but may make such expenditures as in Owner's reasonable judgment will best accomplish the timely completion of the Facility, provided Owner shall not be required or expected to mitigate any such costs by terminating, repudiating or renegotiating any agreement entered into between Contractor and any Subcontractor.

16.3.3 Transition. If Owner elects to terminate this Agreement pursuant to Section 16.1 or this Section 16.3, Contractor shall, at Owner's request (and, in the case of termination under this Section 16.3 only, at Contractor's expense), perform the following services relative to the Work so affected:

(a) assign to Owner or, at Owner's election, to any Replacement Contractor designated by Owner, without any right to compensation not otherwise provided for herein, title to all completed Work paid for and (and Work in progress) not already owned by Owner, together with all Subcontracts and other contractual agreements (including warranties) as may be designated by Owner, all of which Subcontracts and contractual agreements shall be so assignable, and assign to Owner to the extent assignable all issued Governmental Approvals then held by Contractor pertaining to the Work which have been procured in connection with performance of the Work; and

(b) deliver to Owner all design and other information as may be reasonably requested by Owner for the completion or operation of the Facility. Owner shall defend, indemnify and hold harmless Contractor from and against any loss arising out of, or resulting from, Owner's or Replacement Contractor's use of such information that is identified by Contractor as incomplete and preliminary in completing the Work or operating the Facility.

16.3.4 Payment Obligations. If Owner terminates this Agreement pursuant to this Section 16.3, as soon as practicable after Substantial Completion of the Facility, Owner shall determine the total reasonable and necessary expenses incurred and accrued in connection with the termination of this Agreement (including all reasonable legal fees and expenses) and the completion of the Work, including all reasonable amounts charged by any Replacement Contractor to finish the Work and under any of Contractor's Subcontracts or other contractual agreements that Contractor has assigned to Owner or to such Replacement Contractor pursuant to Section 16.3.3(a). Contractor shall be entitled to receive the balance due of the Contract Price minus payments already made to Contractor under this Agreement before termination thereof and minus Owner's expenses incurred in connection with the termination of this Agreement and the completion of the Work as determined in accordance with the preceding sentence within twenty (20) Business Days of the determination of such balance by Owner.

If the total expense so incurred by Owner in completing the Facility exceeds the balance of the Contract Price unpaid at the time of Owner's termination of this Agreement due to Contractor's default, then Contractor shall be liable for and shall pay to Owner the reasonable direct cost of such excess within twenty (20) Business Days following receipt of Owner's demand for such payment. For avoidance of doubt, the provisions of Section 13.5 shall apply to any amounts owed to Owner under this Section 16.3.4. This shall be the sole and exclusive remedy of Owner and the sole liability of Contractor as a result of Owner's termination pursuant to this Section 16.3.

16.3.5 Owner's Right to Perform Work. Any other provisions of this Agreement notwithstanding, and without limitation to Owner's rights under other provisions of this Agreement, if Contractor, after notice from Owner in writing of such failure fails to remedy or proceed to perform any portion of the Work (or correct any Defect in the Work) within thirty (30) days after Owner's notice, or indicates by its actions or inactions that it is unable or unwilling to perform such portion of the Work (or correct such Defect), then Owner shall have the right but not the obligation to perform or cause to be performed such portion of the Work (or correct such Defect), all at Contractor's cost and expense.

For avoidance of doubt, if Contractor fails to pay Owner therefor, within fifteen (15) days of receiving Owner's request for such payment, the provisions of Section 13.5 shall apply.

16.4 Owner Events of Default

Owner shall be in default hereunder upon the occurrence of any one of the following events of default (each an "**Event of Owner Default**"):

- 16.4.1 Owner becomes insolvent, or generally does not pay its debts as they become due, or admits in writing to its inability to pay its debts, or makes an assignment for the benefit of creditors;
- 16.4.2 Any proceeding shall have been instituted against Owner seeking to adjudicate Owner as a bankrupt or insolvent, or Owner shall have made a general assignment for the benefit of its creditors, or a receiver shall have been appointed on account of the insolvency of Owner, or Owner shall have filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization or winding up and, in the case of any such proceeding instituted against Owner (but not by Owner) such proceeding shall not have been dismissed within sixty (60) days of such filing;
- 16.4.3 Any material representation made by Owner in this Agreement shall have been materially false or misleading when made, or any such representation of warranty becomes materially incorrect as a result of which it could reasonably be expected that Owner will be unable to observe and perform its material obligations hereunder, if such breach of representation or warranty is not capable of cure or, if such breach is capable of cure, the effects of such breach shall not have been cured within thirty (30) days of notice from Contractor, or, if the remedy for such breach cannot reasonably be completed within such period, Owner shall have failed promptly to commence and diligently pursue remedial action within such period and conclude such action as soon as practicable; or
- 16.4.4 Owner shall have failed in making a payment by the date five (5) Business Days after the date such payment has become due and payable by Owner to Contractor under Article 13 and such failure continues for thirty (30) days after notice from Contractor; provided, that (i) such default is in respect of a payment amount that is not in dispute, and (ii) the failure by Owner to make such payment is not an exercise by Owner of any of its rights under this Agreement.

16.5 Contractor Remedies Upon an Event of Owner Default

If an Event of Owner Default shall have occurred and be continuing, Contractor shall have the right to terminate this Agreement by delivery of a Notice of Termination to Owner, in addition to any rights and remedies that may be available to Contractor at law or in equity. Upon termination of this Agreement by Contractor because of an Event of Owner Default, Contractor shall be entitled to receive from Owner payment through the end of the month in which termination occurs calculated in accordance with Section 16.1.2 in the same manner as if this Agreement were terminated for convenience by Owner pursuant to Section 16.1. Any amount due thereunder shall be made by the owing Party to the other Party within thirty (30) days after receipt of an invoice therefor.

Upon such payment, Owner shall have the right to take possession of and Contractor shall make available to Owner all Equipment and other components of such Work paid for, and Contractor shall at the request and expense of Owner perform the obligations set forth in Section 16.3.3, provided that Contractor has not terminated this Agreement due to the failure of Owner to pay Contractor and further Contractor shall be paid its Costs in performing its obligations set forth in Section 16.3.3.

16.6 Surviving Obligations

The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement, including any express limitations of, or

releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

ARTICLE 17: LIENS AND CLAIMS

17.1 Waiver and Release of Lien

- 17.1.1 Contractor, for itself, its successors and assigns, does hereby covenant, promise and agree with Owner that, provided Owner is in compliance with its payment obligations hereunder, no mechanics' lien, mechanic's lien affidavit or other claim or encumbrance in the nature of a lien shall be filed or maintained against the Work, the Site or the Facility or any part thereof or appurtenances thereto by Contractor, for Work done or for any tools, Equipment, Materials and Supplies, Contractor's Construction Equipment, or supervision, surveying, engineering, architectural or other services furnished under this Agreement or any Subcontract or any supplements hereto or thereto, for which Owner has made payment to Contractor. Contractor understands that the Port of Tacoma's real property is not susceptible to liens.
- 17.1.2 Contractor, on behalf of all Subcontractors and other parties acting through or under it or them, does hereby covenant, promise and agree with Owner that no mechanics' lien, mechanic's lien affidavit or other claim or encumbrance in the nature of a lien shall be filed or maintained against the Work, the Site or the Facility or any interest therein or part thereof or appurtenances thereto by any Subcontractor, for Work done or for any tools, Equipment, Materials and Supplies, Contractor's Construction Equipment, or supervision, surveying, engineering, architectural or other services furnished under this Agreement or any Subcontract or any supplements hereto or thereto.
- 17.1.3 The waiver of liens set forth in this Section 17.1 shall be an independent covenant in favor of Owner and its successors and assigns and shall operate and be effective with respect to work done and materials and services furnished under any supplemental contract for extra work in connection with the construction of the Facility as well as to any Work performed or provided under this Agreement.

17.2 Liens

- 17.2.1 Provided Owner is in compliance with its payment obligations hereunder, Contractor shall defend, indemnify and hold harmless Owner from any and all liens filed and maintained against the Work or by any Person claiming by or through Contractor against the Site or the Facility, including all expenses and reasonable attorneys' fees incurred in discharging any liens or similar encumbrances.
- 17.2.2 In order to give Owner and each of its successors and assigns full power and authority to protect themselves and the Facility against any and all claims filed by Contractor, or by any Subcontractor or anyone acting under or through Contractor in violation of the foregoing covenant, Contractor, for itself, its successors and assigns, and all such Persons, hereby covenants to execute or re-execute any agreement or instrument as Owner and its successors and assigns shall reasonably request at no cost or expense to Owner or its successors and assigns to evidence this waiver of liens and the agreements contained herein.

ARTICLE 18: TITLE; CARE, CUSTODY AND CONTROL; RISK OF LOSS

18.1 Clear Title

- 18.1.1 Contractor warrants that legal title to and ownership of the Work shall pass to Owner free and clear of any and all liens, claims, security interests or other encumbrances when title thereto is to pass to Owner under Section 18.1.2.

- 18.1.2 Title to all Work, including all Material and Supplies, Equipment, and tools provided by Contractor as part of the Facility and wherever located, shall pass to Owner upon the date Contractor receives and is able to verify deposit of payment for said Work, Materials and Supplies, Equipment or tools.
- 18.1.3 Notwithstanding the transfer of title to Owner pursuant to this Section 18.1, Contractor shall retain care, custody and control of all the foregoing Materials and Supplies, Equipment and tools with respect to the Facility, and shall exercise due care with respect thereto until the earlier of the Mechanical Completion Date or termination of this Agreement.
- 18.1.4 Contractor shall deliver to Owner such certificates, assignments, bills of sale or other documents as reasonably requested by Owner to evidence transfer of title as set forth in this Section 18.1.

18.2 Contractor's Drawings, Etc.

Other than with respect to or related to Contractor's patents, inventions, discoveries, know-how and improvements that are subject to the licenses described in Section 19.2, title to all drawings, specifications, documents, and engineering and other data furnished or to be furnished by Contractor in connection with the Work shall pass to Owner upon Owner's payment for Work related thereto, but Contractor may retain a copy of all such documents only for internal use and only with respect to this Agreement and for no other purpose; provided that, subject to Article 19, Contractor and its Subcontractors shall retain their rights in their standard drawing details, designs, specifications, databases, computer software and any other proprietary property, which intellectual property rights existed prior to the Effective Date of this Agreement or came into existence as a result of Contractor's performance of the Work.

18.3 Care, Custody, and Control

Contractor shall have care, custody and control of the Facility and all Equipment and Materials and Supplies, including Start-up spare parts (and other spare parts if procured by Contractor), procured or provided in connection with the Work, and all other components of the Work, whether or not incorporated therein or located on or off the Site, until the Mechanical Completion Date (and, with respect to Punchlist Items, through Final Completion or earlier acceptance of such item by Owner upon completion or installation of such Punchlist Items) and without regard to any payments made by Owner to Contractor.

18.4 Risk of Loss

Subject to the requirements of Contractor in 18.1.3, Owner shall have risk of loss of the Facility and all Equipment and Materials and Supplies, including Start-up spare parts (and other spare parts if procured by Contractor), procured or provided in connection with the Work, and all other components of the Work, whether or not incorporated therein or located on or off the Site, from Mechanical Completion through Final Completion.

18.5 Not Used

ARTICLE 19: INTELLECTUAL PROPERTY RIGHTS

19.1 Procurement of Proprietary Rights

- 19.1.1 Contractor warrants that no infringement of any U.S. patent, trademark, registered design, copyright, design right or other registerable or proprietary intellectual property right of any kind will result from the performance of the Work, the ownership of the Facility, or operation of the Facility in accordance with this Agreement and, as applicable, the Operating Manual.
- 19.1.2 Contractor shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, and systems incorporated into the Facility. Owner shall

obtain those necessary process licenses from the licensors identified herein. In performing the Work, Contractor shall not incorporate into the Facility any materials, methods, processes or systems which involve the use of any intellectual property or proprietary rights that Owner or Contractor does not have the right to use in connection with the performance of the Work or the construction, ownership or operation of the Facility or which may result in a loss by Owner or Contractor arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other proprietary rights, or applications for any such rights.

19.2 Inventions & Licenses

Without limiting the generality of the provisions of Section 19.1:

- 19.2.1 Contractor agrees to disclose promptly to Owner any inventions, discoveries, know-how or improvements conceived or made by Contractor's employees solely or jointly with others during and arising solely from Contractor's performance under this Agreement prior to Final Completion of the Facility, which inventions, discoveries, know-how or improvements are to be incorporated in the Work. Contractor, warranting that it has the right to do so to the extent incorporated into the Work (but not otherwise), will grant to Owner a nonexclusive, irrevocable, royalty-free, non-transferable license under such inventions, discoveries, know-how or improvements. Said license shall be limited to the operation, maintenance, modification, expansion or repair of the Facility, and shall be transferable (by assignment or sublicense) to any purchaser of the Facility or any portion thereof or to any assignee of this Agreement, permitted under Section 30.1, in connection with such permitted assignment; provided, that if Owner uses third party or Contractor intellectual property for purposes other than those relating to the Facility, and Owner does not procure the necessary ownership, license or rights for such use, Owner shall indemnify, defend and hold harmless Contractor and its Subcontractors with respect to any claims, damages, losses, liabilities or other causes of action arising from such use. To the extent not incorporated into the Work, Owner's exercise of such license and sublicense shall be at Owner's sole risk and expense and subject to rights of third parties, with no representation, guarantee or warranty of any sort made by Contractor.
- 19.2.2 Contractor further agrees to grant and hereby grants to Owner an irrevocable, non-transferable, nonexclusive license and sublicense, free of royalties not included in the Contract Price, under all U.S. patents owned or controlled by, or licensed or sublicensed to, Contractor, with rights to modify (other than changes affecting basic design), now or prior to Substantial Completion, which are necessary or expedient for the construction, operation, maintenance, expansion, repair or alteration (other than changes affecting basic design) of the Facility or any unit or component thereof designed, specified or constructed by Contractor under this Agreement. Said license and any sublicense shall be limited to the Facility and shall be transferable (by assignment or sublicense) to any purchaser of the Facility or any portion thereof or to any assignee of this Agreement, permitted under Section 30.1, in connection with such permitted assignment.
- 19.2.3 Contractor shall obtain from its Subcontractors the patent licenses and licensing or sublicensing rights for Owner that Contractor is required to provide to Owner under this Section 19.2.
- 19.2.4 Contractor shall not use or incorporate in its drawings, designs or specifications, without Owner's written consent, any materials, methods or process features that are covered by patents owned or controlled by third parties and which would require the payment of a royalty or license fee or would restrict the right of Owner to use, expand, repair, replace, modify, or maintain the Facility, or would restrict the sale of any product produced by Owner. In the event, however, of such use or incorporation of patents owned or controlled by third parties, upon such approval by Owner, Contractor shall pay all applicable royalties and license fees.

19.3 Patent Infringement

Contractor shall pay all royalties and license fees payable under or in respect of, and shall defend,

indemnify and hold harmless Owner, and its respective employees, successors, assigns, agents, officers and directors, and anyone else acting for or on behalf of any of the foregoing (the "**Indemnified Persons**") from and against any loss arising out of, resulting from, or reasonably incurred in contesting, any claim or legal action (a) for unauthorized disclosure by Contractor or use of any trade secrets, (b) for any U.S. patent, license, copyright or trademark infringement arising from Contractor's performance, or that of its Subcontractors, under this Agreement, or (c) asserted against such Indemnified Person that (i) concerns any Work, including Equipment, Materials and Supplies, services, or other items provided by Contractor or any Subcontractor or Supplier under this Agreement; (ii) is based upon the performance of the Work by Contractor or any Subcontractor, including the use of any tools or implements for construction by Contractor or any Subcontractor, or (iii) is based upon the design or construction of any item or unit specified by Contractor under this Agreement or upon the operation of any item or unit according to directions embodied in Contractor's final process design, or any revision thereof, prepared or approved by Contractor; except to the extent such claim or allegation arises out of designs, information, or materials provided by Owner. Contractor agrees to use its best reasonable efforts to include, as a term or condition of each Subcontract executed by it in the performance of the Work, a patent indemnification provision extending from each Subcontractor under such Subcontract, to Contractor and its assigns.

19.4 Lawsuits

If such claim or legal action for such infringement results in a suit against an Owner Indemnified Person, Contractor shall, in the absence of a waiver of this indemnity by such Indemnified Person, have sole charge and direction of said suit on such Indemnified Person's behalf so long as Contractor diligently prosecutes the same. If Contractor has charge of a suit brought against an Indemnified Person by a third party, such Indemnified Person shall render such assistance as Contractor may reasonably require in the defense of such suit, except that such Indemnified Person shall have the right to be represented therein by counsel of its own choice and at its own expense. If such Indemnified Person is enjoined from completion of the Facility or any part thereof, or from the use, operation or enjoyment of the Facility or any part thereof as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly arrange to have such injunction removed at no cost to any Indemnified Person. If in such claim or action any device is held to constitute an infringement and its use is enjoined, Contractor shall either secure for each of the Indemnified Persons the right to continue using such device by suspension of the injunction or by procuring for such Indemnified Person a license, or otherwise at Contractor's own expense, replace such device with a non-infringing device, modify it so that it becomes non-infringing, or remove it and replace it with a non-infringing device that meets the requirements of this Agreement, and Contractor shall be responsible for all costs, including mark-up, and delays arising therefrom.

19.5 Effect of Owner's Actions

Owner's acceptance of Contractor's engineering designs or proposed or supplied Materials and Supplies or Equipment shall not be construed to relieve Contractor of any of its obligation under this Article 19.

ARTICLE 20: SUBCONTRACTORS

20.1 Approved Suppliers List

Contractor shall not enter into any Subcontract with respect to any item of Equipment or any other component of the Work without the prior written permission of Owner, such permission not to be unreasonably withheld. Contractor shall not substitute an approved Subcontractor, person or entity previously selected if Owner makes reasonable objection to such substitution. If Owner reasonably concludes that any portion of the Work subcontracted by Contractor is not being performed in accordance with this Agreement, Contractor shall, upon request of Owner, remove the Subcontractor performing such work. This removal shall not relieve Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of this Agreement within the Contract Price and in accordance with the Project Schedule, nor shall Owner be obligated to so request.

20.2 Work to Conform

Contractor warrants that all Subcontractors shall perform their portion of the Work or provide Equipment or Materials and Supplies in accordance with the applicable provisions of this Agreement. Contractor shall furnish such information relative to its Subcontractors (including copies of Subcontracts or purchase orders with pricing information deleted) as Owner may reasonably request.

20.3 Contractor Responsible for Work

Contractor is responsible for each of the various portions of the Work so that all items thereof conform in all respects to the requirements of this Agreement regardless of any failure of any Subcontractor to perform, or any disagreement between any Subcontractors or between any Subcontractors and Contractor, or Owner's approval of any Subcontract or Subcontractor. Contractor agrees to diligently, and using commercially reasonable efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor that is defective in material or workmanship or otherwise fails to conform to this Agreement, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If a Subcontractor of any tier defaults in its obligation promptly to correct any such deficiency, Contractor shall be responsible for correcting the deficiency.

20.4 Terms in Subcontracts

All Work performed for Contractor by a Subcontractor shall be pursuant to a written Subcontract between Contractor and such Subcontractor. Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of this Agreement, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by this Agreement, assumes toward Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of this Agreement, to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with this Agreement. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Contractor shall provide to Owner unpriced copies of the written agreements between the Contractor and any Subcontractor on request. No Subcontract shall bind or purport to bind Owner. Each Subcontract shall contain provisions that:

- 20.4.1 reasonably preserve and protect all the rights of Owner under this Agreement and to the Work to be performed under the Subcontract, so that the subcontracting of such Work will not prejudice such rights;
- 20.4.2 require such Subcontractor to provide and maintain such insurance as required by this Agreement in amounts determined by the Contractor to be reasonable for the Work performed by the Subcontractor; and
- 20.4.3 allow the assignment by Contractor of all of its interest in the Subcontract to Owner (and its successors and permitted assigns) without requiring such Subcontractor's consent to such assignment.

20.5 Assignment

Upon termination of this Agreement by Owner pursuant to Section 16.3, and if requested by Owner, Contractor shall assign to Owner all its rights and interest in any Subcontracts entered into by Contractor for performance of any portion of the Work.

ARTICLE 21: LABOR RELATIONS

21.1 Violations

Contractor shall promptly take any and all reasonable steps in connection with the resolution of violations of Project and other labor agreements and jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or jurisdictional disputes.

21.2 Disputes

Contractor shall at all times use its best effort and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, boycotts, walkouts, slowdowns, strikes and other labor difficulties involving its work force at the Site (each a "**Labor Dispute**"). Contractor shall undertake promptly all reasonable efforts to prevent or resolve any Labor Dispute among its employees or the employees of its Subcontractors. If a Labor Dispute occurs, Contractor shall take all reasonable actions to minimize any resulting disruption to the progress of the Work. Contractor shall promptly advise Owner in writing of any actual, anticipated or threatened Labor Dispute that might affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of Labor Disputes shall be at the reasonable discretion of the Party involved in such Labor Dispute. For the avoidance of any doubt, Contractor is responsible for the resolution of any Labor Disputes, and any such Labor Dispute shall not constitute an Event of Force Majeure or otherwise entitle Contractor to any increase in the Contract Price or adjustment to the Guaranteed Completion Date or Project Schedule.

ARTICLE 22: INSURANCE

22.1 Contractor's Insurance

Contractor and/or its Subcontractors of any tier shall effect and maintain, at their own expense, from the Effective Date through the expiration of the Substantial Completion, insurance policies of the following types and amounts, with insurers with a minimum A.M. Best Co. Key Rating Guide of A/VII (or higher) and under forms of policies reasonably satisfactory to Owner. Insurance limits may be provided through a combination of primary and excess policies, with the excess and/or umbrella policies having coverages at least as broad as each and every underlying policy. Failure of Owner to check, or approve, coverages does not limit or waive indemnities or insurance required. In the event of a claim, Contractor shall provide Owner the insurer's summary of coverage, endorsements, and/or declaration page provided with the relevant insurance policy and the applicable terms and conditions of such policy as requested by Owner. On or before the Effective Date, Contractor shall provide and shall cause all Subcontractors to provide Owner insurance certificate executed by an authorized representative stating the names of insurance carriers, policy numbers and policy dates and certifying that its insurance coverage meets the following requirements:

22.1.1 **Workers' Compensation and Employer's Liability**. Workers' compensation and labor liability insurance covering all personnel supplied by Contractor, in accordance with the legal requirements of the states of hire or countries of operations; provided, however, Contractor shall also maintain in force employer's liability insurance with a limit of one million U.S. Dollars (U.S. \$1,000,000) per accident. If applicable, endorsement(s) that provide coverage for the Defense Base Act, Federal Employer's Liability Act, Marine Employers Liability, Longshore and Harbor Workers' Compensation Act, Jones Act, and the Outer Continental Shelf Lands Act will also be included.

22.1.2 **Commercial General Liability**. Commercial general liability insurance with blanket contractual liability, terrorism coverage, on-going operations, products and completed operations for a period of three years after Final Completion, broad form property damage covering Contractor's performance of the Work, and providing for a combined single limit of five million U.S. Dollars

(U.S. \$5,000,000) per occurrence and in the annual aggregate for personal injury, death or property damage. The above limits shall be dedicated to the Tacoma LNG Project. Where allowed by the terms and conditions of the policy, defense expenses may be provided in addition to limits.

- 22.1.3 **Automobile Liability.** Automobile liability insurance covering owned, non-owned and hired motor vehicles, if any, with combined single limits of five million U.S. Dollars (U.S. \$5,000,000) per occurrence for personal injury, death or property damage. Auto coverage shall include pollution for upset and overturn and required endorsement for transporting any hazardous materials to the site, provided that if such pollution coverage is not available under Contractor's automobile liability policy, Contractor's pollution liability policy will respond to five million U.S. Dollars (U.S. \$5,000,000) per occurrence or claim and in the aggregate.
- 22.1.4 **Aviation Liability.** Aviation liability insurance to cover aircraft, if any, owned, chartered or hired by Contractor and used in connection with the performance of this Agreement with combined single limits of ten million U.S. Dollars (U.S. \$10,000,000) per occurrence and in the aggregate.
- 22.1.5 **Umbrella/Excess Liability.** Umbrella or excess liability insurance in excess of the coverages provided for in Sections 22.1.1 as respects Employers Liability including Marine Employers Liability, 22.1.2 and 22.1.3, above covering Contractor's performance of the Work with a limit of fifty million U.S. Dollars (U.S. \$50,000,000) per occurrence and in the aggregate. Such coverage shall be on a follow-form basis with a drop down provision where primary coverage is aggregated, provided that such limits shall not be dedicated and any coverage above twenty-five million U.S. Dollars (U.S. \$25,000,000) may be written on a claims made basis. To the extent this insurance is written on a claims-made basis, it shall cover all acts of the Contractor during the term and shall be continuously maintained until at least three (3) years beyond the earlier of termination of the Contract or Final Completion.
- 22.1.6 **Contractor's Construction Equipment.** "All Risk" insurance covering construction machinery, tools, and Contractor's Construction Equipment owned, leased, borrowed or rented during the performance of the Work.
- 22.1.7 **Professional Liability for Design and Engineering.** Professional liability for design and engineering with limits of \$10,000,000 per occurrence and in the annual aggregated. Covered professional services shall specifically include all design and engineering services to be performed under the Agreement.
- 22.1.8 **Marine Liability**
Where Contractor and/or Subcontractors are performing marine operations, including but not limited to loading/unloading of watercraft, ownership; maintenance; use; leasing; chartering or borrowing of any watercraft, care custody and control of watercraft, ownership and/or operations of docks; piers or wharfs, or any similar marine operations, the following coverages are required, as applicable:
- Marine Liability with limits of \$50M per occurrence / \$50M in the aggregate, including:
- Sudden and Accidental Pollution
 - Tankerman's liability
 - Marine Terminal Operators Liability
 - Charterer's Liability
 - Terrorism Coverage
 - Marine General Liability
 - Stevedores/wharfingers
- Hull and Machinery subject to the following:
- Fair Market Value of hull and any loss of use (insured or self-insured)
 - All "as owner" and "other than owner" clauses shall be deleted
 - navigation limitations shall be adequate for contractor to perform the specified work

Protection & Indemnity for any owned or operated watercraft used for the project with limits of fifty million U.S. Dollars (U.S. \$50 million) per occurrence, including:

- o voluntary and compulsory removal of wreck and/or debris
- o full collision liability
- o tower's liability (if applicable)
- o All "as owner" and "other than owner" clauses shall be deleted
- o navigation limitations shall be adequate for Contractor to perform the specified work

Vessel Pollution including clean-up costs for any owned or operated watercraft used for the project with limits of the greater of the statutory limit or fifty million U.S. Dollars (U.S. \$50 million) per occurrence.

22.2 General Provisions Applicable to Contractor's Insurance

- 22.2.1 **Deductibles**. Notwithstanding that the foregoing insurance policies required to be carried by Contractor and Subcontractors may be subject to deductibles. Contractor and Subcontractors shall be responsible for each and every deductible or any self-insured retentions or self-insurance.
- 22.2.2 **Insurance Certificates**. On or before the Effective Date, for all insurance policies required to be carried by Contractor or Subcontractors, Contractor shall supply and cause all Subcontractors to supply Owner with evidence demonstrating its compliance with the insurance requirements herein, in the form of certificates of insurance on standard ACORD forms and applicable additional insured, primary/non-contributory, waiver of subrogation, and notice of cancellation endorsements. In addition, all such insurance policies shall provide for coverage in the event an action is commenced in any court in any country in which the Work is being performed or in any court of the U.S. or any state thereof; such policies shall also provide that they may not be terminated until thirty (30) days after Owner has received written notice of the intention to terminate such insurance coverage, and shall further provide that Owner shall have the opportunity to cure any default of Contractor or any Subcontractor. Contractor shall have the sole responsibility for ensuring the insurance of Subcontractors complies with the insurance requirements in Section 22.
- 22.2.3 **Waiver of Subrogation & Additional Insured**. In all insurance policies required to be carried by Contractor or its Subcontractors, Contractor and its Subcontractors shall have the insurance carriers waive all rights of subrogation against Owner. Such insurance policies shall be effective upon the issuance of the Notice to Proceed and shall name Owner, Port of Tacoma, the City of Tacoma, Tacoma Rail, TOTE and their respective directors, officers, employees, and agents as additional insureds on the Commercial General Liability, Auto Liability, Umbrella/Excess, and Marine Liability policies with regard to Contractor's liabilities arising pursuant to this Agreement and only to the extent of Contractor's indemnity obligations herein. Such policies must be primary and any insurance carried by Owner must be non-contributing to any insurance or self-insurance carried by Contractor or its Subcontractors. Such policies must contain a cross-liability clause so that Owner and Contractor and Subcontractors are regarded as third parties to each other and must provide for payment in U.S. Dollars for any claim, expense, loss, liability, damage, fine or penalty to the Work or any other property, or payment in the currency of any claim, expense, loss, liability, damage, fine or penalty to a third person.
- 22.2.4 **Insurance Requirements**. In specifying the insurance requirements herein, Owner does not represent that such insurance is adequate to protect Contractors or its Subcontractors for loss, damage or liability arising from their work. Contractor and its Subcontractors are solely responsible to inform themselves of the types or amounts of insurance they may need beyond these requirements to protect themselves. The insurance coverages set forth are minimum requirements and shall not be construed to relieve Contractor or its Subcontractors for liability in excess of such coverage, nor shall it preclude Owner from taking any other actions available to Owner.

22.3 Owner Insurance

Owner shall effect and maintain, at its own expense, insurance policies required herein with insurers and under forms of policies that meet the requirements of this Agreement. Insurance limits may be provided through a combination of primary and excess policies, with the excess and/or umbrella policies having coverages at least as broad as each and every underlying policy. Prior to commencement of work on site, Owner shall provide to Contractor an insurance certificate executed by an authorized representative stating the names of insurance carriers, policy numbers and policy dates and certifying that its insurance coverage meets the following requirements:

22.3.1 **Builder's All Risk**. Owner shall obtain and maintain, at its cost and expense for premiums, builder's all risk insurance covering risk of loss of or damage to the Work-in-progress with limits at least equal to the maximum probable loss and including extra expense and expediting expense and all Owner, Contractor and Subcontractor Supplied Items and Bulk Materials, Permanent Equipment, Spare Parts, Operational Parts and Consumables intended for incorporation therein, through Facility Acceptance and with a twelve (12) month maintenance period. In the event of loss to the Project Works falling under the applicable Builder's Risk policy, Owner will retain control of the insurance claim with Contractor cooperating and acting solely as repair Subcontractor for the related damage. Contractor shall be compensated in accordance with Article 9, and including extra expense and expediting expenses associated with this repair.

22.3.2 **Ocean Marine Cargo and Air Freight Insurance**. Owner shall obtain and maintain, at its cost and expense for premiums, ocean marine cargo and air freight insurance house-to-house, covering physical loss or damage to all Bulk Materials, Permanent and Spare Equipment and Consumables for the Project under an all risk policy in an amount sufficient to cover the full replacement value, plus 10% of all shipments arising out of any kind of transportation.

22.3.3 Not used.

22.3.4 **Pollution Liability**. Pollution liability insurance covering pollutants that may be uncovered during the performance of the Work or introduced to the project Site by Contractor's Construction Equipment used in the performance of the Work, and providing for a combined single limit of ten million U.S. Dollars (U.S. \$10,000,000) per occurrence and in the aggregate for personal injury, death or property damage.

22.4 General Provisions Applicable to Owner Insurance

22.4.1 **Deductibles**. Notwithstanding that the foregoing insurance policies required to be carried by Owner may be subject to deductibles, Owner shall be responsible for each and every deductible, except Contractor shall be responsible for the first \$250,000 of the deductible for each and every loss under Section 22.3.1, Builder's All Risk, except for losses arising out of the work performed by the Owner's other contractors.

22.4.2 **Insurance Certificates**. For all insurance policies required to be carried by Owner, Owner shall promptly supply Contractor with certificates of insurance or other such evidence of such insurance as Contractor may reasonably request. In the event of a claim, Owner shall provide Contractor the insurer's summary of coverage, endorsements, and/or declaration page provided with the relevant insurance policy and the applicable terms and conditions of such policy as requested by Contractor. In addition, all such insurance policies shall provide for coverage in the event an action is commenced in any court in any country in which the work is being performed or in any court of the U.S. or any state thereof. Policies shall be endorsed to require insurers to provide Contractor with thirty (30) days' advance written notice of the intent to terminate such insurance coverages.

22.4.3 **Waiver of Subrogation and Additional Insured**. Owner shall have the insurance carriers

waive all rights of subrogation against Contractor and its Subcontractors and name the Contractor and its Subcontractors as an additional insureds under the builders risk, cargo and pollution liability policies of insurance provided by Owner. Such policies must be primary, and any insurance carried by the Contractor or its Subcontractors must be non-contributing to any insurance carried by the Owner.

ARTICLE 23: CONFIDENTIALITY

23.1 Confidential Information

23.1.1 Owner and Contractor shall be subject to the provisions of Attachment K for Confidential Information.

23.2 Persons to Whom Confidential Information is Disclosed

23.2.1 Owner and Contractor shall be subject to the provisions of Attachment K for Disclosure of Confidential Information.

23.3 Public Relations

All public relations matters arising out of or in connection with the Project shall be the responsibility of and handled by Owner. Contractor shall obtain Owner's prior approval of the text of any announcement, publication, or other type of communication, written or oral, concerning this Agreement, the Project or the Work prior to the dissemination or release of the same by Contractor or any Subcontractors, which approval shall not be unreasonably withheld. No photographs of the Facility, the Existing Facility, or any other part of the Facility will, at any time, be published by or on behalf of Contractor or any Subcontractors or Suppliers unless prior written authorization is obtained from Owner. Contractor shall refer all media inquiries with respect to the Work or the Facility to Owner.

23.4 Ownership

Owner and Contractor shall be subject to the provisions of Attachment K for ownership of Confidential Information.

ARTICLE 24: NOT USED

ARTICLE 25: NOT USED

ARTICLE 26: REPRESENTATIONS AND WARRANTIES

26.1 Contractor's Representations and Warranties

Contractor represents and warrants to Owner that:

26.1.1 Contractor is a corporation duly organized and validly existing under the Laws of the jurisdiction of its organization. Contractor has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party. Contractor has provided Owner with true and accurate copies of Contractor's organizational documents as in effect on the Effective Date. Contractor is duly qualified or licensed to do business in the State of Washington and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Agreement or would result in a material liability to or would have a

material adverse effect on its financial condition, business, operations or prospects. Contractor has provided Owner with evidence of good standing from Governmental Authorities of Contractor's state of organization;

- 26.1.2 Contractor has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, and each of the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on its part, does not require any approval, except as has been heretofore obtained, or any consent of or approval from any trustee of any indebtedness or other obligation of it, except for such as have been duly obtained, and does not contravene or constitute a default under its organizational documents or, to the best of its knowledge (after due inquiry), any provision of applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement; and it is in compliance with all applicable Laws and Governmental Approvals (i) which govern its ability to perform its obligations under this Agreement or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under this Agreement;
- 26.1.3 Not Used;
- 26.1.4 Contractor has duly and validly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligation of Contractor enforceable against it in accordance with this Agreement's terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar Laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law);
- 26.1.5 Contractor has all the required skills, experience and capacity necessary to perform or cause to be performed the Work in a proper, timely and professional manner, and Contractor has visited the Site to visually inspect the general and local conditions which could affect the Work and ingress and egress thereto, and all related utility easements and construction lay down areas, and, without limiting the provisions of Section 4.16 and Article 9 respecting Owner Site Risks, is reasonably satisfied based on its limited inspection that the Site should be adequate for Contractor's purposes hereunder, subject to Section 4.7;
- 26.1.6 Contractor has knowledge of all of the Laws that must be followed in performing the Work. The Facility can be constructed under current building codes, zoning, land use and other applicable Laws and Governmental Approvals affecting the development of the Site and the performance of the Work, and it can be constructed for the Contract Price;
- 26.1.7 Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. It is able to furnish the Facility, Materials and Supplies, Equipment, Contractor's Construction Equipment, labor and design services needed for performance of the services required hereunder, is experienced in and competent to perform the Work, both construction and design, contemplated by this Agreement, and is authorized to do business in the locale in which the Facility is to be erected;
- 26.1.8 Contractor owns or has the right to use all the U.S. patents, trademarks, service marks, trade names, copyrights, licenses, franchises, permits or rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others. In addition, it holds or works under the general supervision of a person holding any and all consents, licenses, permits and other authorizations, both construction and design, required by law to perform the services under this Agreement; and
- 26.1.9 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any Governmental Authority or, to the best of Contractor's knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to

result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability hereof.

26.2 Owner's Representations and Warranties

Owner represents and warrants to Contractor that:

- 26.2.1 Owner is a corporation duly organized and validly existing under the Laws of the jurisdiction in which it has been organized. Owner has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party. Owner has provided Contractor with true and accurate copies of Owner's organizational documents as in effect on the Effective Date. Owner is duly qualified or licensed to do business in the State of Washington and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Agreement or would result in a material liability to or would have a material adverse effect on its financial condition, business, operations or prospects. Owner has provided Contractor with evidence of Owner's good standing from Governmental Authorities of Contractor's state of organization, dated not more than ten (10) days prior to the Effective Date;
- 26.2.2 Owner has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; each of the execution, delivery and performance by Owner of this Agreement has been duly authorized by all necessary action on the part of Owner, does not require any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of Owner, except for such as have been duly obtained, and does not contravene or constitute a default under its organizational documents or, to the best knowledge of Owner (after due inquiry), any provision of applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon Owner, or subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement; and Owner is in compliance with all applicable Laws and Governmental Approvals (i) which govern its ability to perform its obligations under this Agreement or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under this Agreement;
- 26.2.3 Not Used;
- 26.2.4 Owner has duly and validly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligation of Owner enforceable against it in accordance with this Agreement's terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar Laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law); and
- 26.2.5 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any Governmental Authority pending or, to the best knowledge of Owner, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Owner's ability to perform its obligations under this Agreement or on the validity or enforceability hereof.

ARTICLE 27: LIMITATION OF LIABILITY

27.1 Liability for Indirect or Consequential Damage

- 27.1.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFIT, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF SAVINGS OR FOR ANY OTHER

INDIRECT, PUNITIVE, MULTIPLE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE THAT MAY BE SUFFERED BY THE OTHER PARTY, AS APPLICABLE, WHETHER CAUSED BY BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE

27.1.2 FOR AVOIDANCE OF DOUBT, THE LIMITATION SET FORTH IN SECTION 27.1.1 SHALL NOT BE CONSTRUED TO LIMIT CONTRACTOR'S WARRANTY OBLIGATIONS UNDER ARTICLE 8, ITS INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 28 WITH RESPECT TO LOSSES ARISING OUT OF CLAIMS OR CAUSES OF ACTION OF THIRD PARTIES, OR ITS LIABILITY FOR LIQUIDATED DAMAGES UNDER ARTICLE 14.

27.2 Contractor Maximum Liability

- 27.2.1 The aggregate liability of Contractor to Owner for liquidated damages shall be as set forth in Article 14.
- 27.2.2 The liability of Contractor to Owner for failure of the Facility to meet the Performance Guarantees specified in Attachment D shall be subject to Performance Liquidated Damages, but such liability shall be subject to the limitations set forth in Attachment D.
- 27.2.3 The total aggregate liability of Contractor to Owner whether for breach of contract, tort (including negligence), strict liability, or otherwise arising out of or in connection with this Agreement or the Work shall not exceed thirty percent (30%) of the Contract Price.
- 27.2.4 The limitations of liability set forth in this Article 27 shall not be construed to limit the liability of any insurer under any insurance policy.

ARTICLE 28: INDEMNIFICATION

28.1 Indemnity

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY AND DEFEND OWNER AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND SUBCONTRACTORS, AS WELL AS THE OWNER REPRESENTATIVE AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES (EACH, AN "**INDEMNIFIED PARTY**") FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING LIABILITIES ARISING OUT OF THE APPLICATION OF THE DOCTRINE OF STRICT LIABILITY), OBLIGATIONS, LOSSES, DAMAGES, ROYALTIES, PENALTIES, CLAIMS, ACTIONS, SUITS, JUDGMENTS, REASONABLE COSTS, EXPENSES AND DISBURSEMENTS, (INCLUDING FINES, COURT COSTS, REASONABLE ATTORNEYS' FEES (INCURRED ON SUCH CLAIMS OR IN PROVING THE RIGHT TO INDEMNIFICATION) AND EXPENSES AND COSTS OF INVESTIGATION), ARISING OUT OF OR RELATING TO CLAIMS OF THIRD PARTIES (EACH INDIVIDUALLY, OR COLLECTIVELY, "**LOSS**") THAT MAY BE IMPOSED ON OR SUFFERED OR INCURRED BY OR ASSERTED AGAINST ANY INDEMNIFIED PARTY TO THE EXTENT THAT SUCH LOSSES ARISE OUT OF, OR ARE CAUSED BY, THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR, A SUBCONTRACTOR OF ANY TIER, THEIR AGENTS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, ARISING OUT OF OR RELATING TO THE WORK, THE PROJECT, THE FACILITY, THE SITE, THE EXISTING FACILITY, OR THIS AGREEMENT. IF BOTH THE INDEMNIFIED PARTY AND CONTRACTOR, A SUBCONTRACTOR OF ANY TIER, THEIR AGENTS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE SHALL HAVE BEEN CONCURRENTLY NEGLIGENT WITH RESPECT TO ANY SUCH LOSS, LIABILITY SHALL BE APPORTIONED IN ACCORDANCE WITH THE EXTENT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY AND CONTRACTOR, A SUBCONTRACTOR OF ANY TIER, THEIR AGENTS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, EXCEPT THAT OWNER SHALL NOT BE DEEMED TO BE NEGLIGENT FOR PURPOSES OF THIS SENTENCE TO THE EXTENT OWNER MAY HAVE

VICARIOUS LIABILITY FOR THE NEGLIGENCE OF CONTRACTOR DUE TO OWNER'S EMPLOYMENT OR SUPERVISION OF CONTRACTOR.

28.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS ARTICLE 28 BY AN EMPLOYEE OF CONTRACTOR, A SUBCONTRACTOR OF ANY TIER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 28.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR A SUBCONTRACTOR OF ANY TIER UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. FOR THE PURPOSES OF THIS INDEMNIFICATION AND FOR NO OTHER PURPOSE, CONTRACTOR EXPRESSLY WAIVES ANY IMMUNITY IT MIGHT OTHERWISE HAVE OR ASSERT UNDER THE INDUSTRIAL INSURANCE ACT, TITLE 51, REVISED CODE OF WASHINGTON, AND AGREES THAT THIS WAIVER HAS BEEN DISCUSSED AND MUTUALLY NEGOTIATED. CONTRACTOR SHALL DISCUSS, NEGOTIATE AND REQUIRE IN EACH OF ITS SUBCONTRACTS A WAIVER OF IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT, TITLE 51, REVISED CODE OF WASHINGTON.

28.3 Cooperation Regarding Claims

If an Indemnified Party receives notice or has knowledge of any Loss that may result in a claim for indemnification by such Indemnified Party against the other Party pursuant to this Article 28, such Indemnified Party shall as promptly as possible give the Indemnifying Party notice of such Loss, including a reasonably detailed description of the facts and circumstances relating to such Loss, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto; provided, that failure promptly to give such notice or to provide such information and documents shall not relieve the indemnifying party from the obligation hereunder to respond to or to defend the Indemnified Party against such Loss unless such failure shall materially diminish the ability of the Indemnifying Party to respond to such claim or to defend the Indemnified Party. The Contractor, upon its acknowledgment in writing of its obligation to defend and indemnify the Indemnified Party, shall be entitled to assume the defense or to represent the interests of the Indemnified Party seeking indemnification in respect of such Loss, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost; provided, that no such settlement shall be made without the consent of the Indemnified Party; provided, further, that if any such settlement is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely to affect the Indemnified Party's business or operations other than as a result of money damages or other money payments, then the Indemnified Party shall be entitled to take control of the defense and investigation of such Loss, to employ and engage legal counsel and other consultants of its own choice to handle and defend the same, and to compromise or settle such claim, all at the Contractor's cost, risk and expense.

Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense. The Parties shall cooperate with each other in any notifications to insurers with respect to any Losses.

28.4 Taxes

Contractor shall be responsible for the ascertainment and payment of any and all Taxes assessed against it in connection with the performance of this Agreement, and shall protect and indemnify Owner and hold Owner harmless from any all claims or liability for income, remittance, royalty, turnover, profit or any other Taxes (including any corresponding interest, fines or penalties) assessed or levied by any Governmental Authority against Contractor, or against Owner, for or on account of any payment made to or earned by Contractor under this Agreement. Contractor further agrees to protect and hold Owner harmless from any and all Taxes (including Social Security Taxes, disability insurance, contributions for unemployment insurance and retirement benefits) assessed or levied against or on account of wages, salaries, or other benefits paid to Contractor's personnel or employees of Subcontractors, and all Taxes assessed or levied against, on or for account of any property or Contractor's Construction Equipment of

Contractors or its Subcontractors.

28.5 Benefit of Third Party Arrangements

Upon Contractor's reasonable request and subject to the execution by the Parties of a joint defense agreement reasonably acceptable to Owner, Owner shall use commercially reasonable efforts to extend to Contractor and Subcontractors, to the fullest extent allowed by law, the benefit of all releases, waivers, indemnities, and other limitations of liability available from third parties in any way relating to the liabilities of Contractor or any Subcontractor in connection with the Work, and Contractor shall use commercially reasonable efforts to extend to Owner, to the fullest extent allowed by law, the benefit of all releases, waivers, indemnities, and other limitations of liability available from third parties in any way relating to the liabilities of Owner in connection with the Work.

ARTICLE 29: DISPUTE RESOLUTION

29.1 Claims

29.1.1 **Definition.** A Claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, extension of time, or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to this Agreement. The responsibility to substantiate Claims shall rest with the Party making the Claim. Claims must be initiated in writing and include the information and substantiation required by this Agreement. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor any log entry, nor an Owner's request for or Contractor's response to a Change Order proposal, nor a notice of a potential or future Claim shall constitute a Claim.

29.1.2 **Continuing Agreement Performance.** Pending final resolution of a Claim, including the dispute resolution process described in this Article 29, and except as otherwise agreed in writing or as provided in this Agreement, Contractor shall proceed diligently with performance of this Agreement and maintain Contractor's Schedule, and Owner shall continue to make payments of undisputed amounts in accordance with this Agreement, provided that Contractor shall continue to perform any Work (the good-faith estimated Cost of which does not exceed \$250,000) that is the subject of a Claim and record its Costs on a time and materials basis until the relevant Claim is resolved, whereupon the Parties will agree on a Change Order reconciling the Cost for disputed work performed with the adjustment to the Contract Price resulting from the resolution of the Claim.

29.1.3 **Claims for Additional Cost.** If Contractor wishes to make a Claim for an increase in the Contract Price, written notice as provided herein shall be given before proceeding to execute the Work, and a written notice and a written Claim must be made in accordance with this Article 29, or it will be waived. If Contractor believes additional Cost is involved for reasons including but not limited to (1) a written interpretation from Owner, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Owner, (4) failure of payment by Owner, (5) termination of this Agreement by Owner, (6) Owner's suspension, or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 29. Prior notice is not required for Claims relating to an emergency endangering life or property as discussed in this Agreement.

29.1.4 **Claims for Additional Time.** If Contractor wishes to make a Claim for an increase in the Guaranteed Completion Date or adjustment to the Project Schedule, written notice as provided herein shall be given and a written Claim must be made in accordance with this Article 29, or it will be waived. Contractor's Claim shall include an estimate of any Cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor is not entitled to an extension of the Guaranteed Completion Date, adjustment to the Project Schedule, or an increase in the Contract Price if the delay was

caused by Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them. If the delay was not caused by Owner, Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, such delay shall be deemed a Force Majeure event. If the delay was caused by Owner or anyone acting on Owner's behalf, Contractor is entitled to an extension of the Guaranteed Completion Date, an adjustment to the Project Schedule, and an adjustment of the Contract Price. Any adjustment to the Guaranteed Completion Date arising from a Change Order or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby.

29.2 Resolution of Claims and Disputes

- 29.2.1 In an effort to reduce the incidence and costs to all Parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, this Agreement or the breach thereof, except claims which have been waived under the terms of this Agreement, shall be decided exclusively by the following alternative dispute resolution procedure unless the Parties mutually agree in writing otherwise. To the extent that Owner and Contractor agree to a partnering process to help resolve disputes, such processes shall be in addition to, and not in place of, the mandatory dispute resolution procedures in this Agreement.
- 29.2.2 Except for Claims requiring notice before proceeding with the affected Work as otherwise described in this Agreement, Contractor shall submit a written notice of any Claim to Owner within fourteen (14) days after Contractor knew or should reasonably have known of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all Claims, Contractor shall submit a written Claim as provided herein within thirty (30) days of submitting the notice. Claims shall include a clear description of the Claim and any proposed change in the Contract Price (showing all components and calculations) and/or Guaranteed Completion Date (showing cause and analysis of the resultant delay in the critical path and other information referenced in Article 10) and shall provide all data supporting the Claim, including but not limited to a complete explanation as to why the relief sought is not within the scope of this Agreement. Contractor may delay submitting data by an additional fourteen (14) days if it notifies Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in Cost and in time to which Contractor (and Subcontractors of any tier) is entitled as a result of the event giving rise to the Claim and may not contain reservations of rights without Owner's written approval, and any such unapproved reservations of rights shall be without effect. Any claim of a Subcontractor of any tier may be brought only through, and after review by, Contractor. For the purposes of calculating such time periods, an "event giving rise to a Claim," among other things, is not a Request for Information but rather is a response that Contractor believes would change the Contract Price and/or Guaranteed Completion Date.
- 29.2.3 **Notice and Claims.** All notices and Claims shall be made in writing as required by this Agreement. Any notice of a Claim of Contractor against Owner and any Claim of Contractor, whether under this Agreement or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of this Agreement. No act, omission, or knowledge, actual or constructive, of Owner shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless Owner and Contractor sign an explicit, unequivocal written waiver approved by a corporate officer of both Parties. The fact that Owner and Contractor may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under this Agreement shall not constitute a waiver of the provisions of this Agreement unless Owner and Contractor sign an explicit, unequivocal waiver approved in writing by a corporate officer of both Parties. Contractor expressly acknowledges and agrees that its failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices Owner, including but not limited to, as applicable, the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, Contractor and Owner agree that Owner shall be prejudiced by Contractor's failure to timely submit required notices and/or Claims, and Owner shall not be required to

prove or establish actual prejudice to enforce the notice or Claim provisions of this Agreement.

- 29.2.4 In the event of a Claim against Contractor prior to Mechanical Completion, Owner shall submit written notice of any Claim to Contractor within fourteen (14) days after Owner knew or should reasonably have known of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all its Claims, Owner shall submit a clear description of the Claim, including reasonable supporting documentation, within thirty (30) days of submitting the notice. Owner may, but is not obligated to, notify the Contractor Guarantor, if any, of the nature and amount of the Claim. If the Claim relates to Contractor's default, Owner may, but is not obligated to, notify the Contractor Guarantor and request its assistance in resolving the controversy.
- 29.2.5 If a Claim relates to or is the subject of a mechanic's lien, the Party asserting such Claim may proceed in accordance with applicable Law to comply with the lien notice or filing deadlines.
- 29.2.6 At any time following receipt of a written Claim, and as a condition precedent to mediation, either Party may require that an officer of Contractor and an officer of Owner (all with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved during such meeting, or if such a meeting is not requested, neither Party may bring litigation against the other Party unless the Claim is first subject to nonbinding mediation as described in this Article 29. This requirement cannot be waived except by an explicit written waiver signed by Owner and Contractor.

29.3 Mediation

- 29.3.1 Claims, disputes, or other matters in controversy arising out of or related to this Agreement except those waived, shall be subject to mediation as a condition precedent to the initiation of binding dispute resolution. This requirement cannot be waived except by an explicit written waiver signed by Owner and Contractor.
- 29.3.2 The Parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other Party to the Agreement, and the Parties shall promptly attempt to mutually agree on a mediator. If the Parties have not reached agreement on a mediator within thirty (30) days of the request, either Party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the Parties mutually agree, with a copy to the other Party, and the mediation shall be administered by the American Arbitration Association (or other agreed service) in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall then be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. Mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending completion of the mediation, unless stayed for a longer period by agreement of the Parties or court order.
- 29.3.3 The Parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 29.3.4 Representatives of Contractor and Owner must attend the mediation session in person with authority to settle the Claim and with authority to adjust pre-existing settlement authority if necessary. To the extent there are other parties in interest, such as insurers or Subcontractors, their representatives, also with authority to settle the Claim and with authority to adjust pre-existing settlement authority if necessary, shall also attend the mediation session in person. Unless Owner and Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion and prior to Final Completion.

29.4 Litigation

- 29.4.1 Neither Party may bring litigation on Claims unless such Claims have been properly raised and considered in accordance with the procedures of this Article 29. The claiming Party shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 29. All unresolved Claims of Contractor shall be waived and released unless Contractor has complied with the time limits of this Agreement, and litigation is served and filed within the earlier of (a) one-hundred twenty (120) days after the Date of Substantial Completion approved in writing by Owner or (b) sixty (60) days after Final Completion. This requirement cannot be waived except by an explicit written waiver signed by Owner and Contractor. The pendency of mediation (the time period between the non-requesting Party's receipt of the written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the Parties of impasse or thirty (30) days after the scheduled date of the mediation session.
- 29.4.2 Owner may join Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of Contractor.

ARTICLE 30: MISCELLANEOUS

30.1 Assignment

Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that a Party may assign this Agreement without consent if the assignment is:

- 30.1.1 To any of its Affiliates, wherein "Affiliates" is defined as any entity controlling, controlled by or under common control with a Party. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, securities, contractual rights, or otherwise;
- 30.1.2 To any purchaser of all or substantially all of its assets, any business or corporate successor, or any purchaser of the technology or the assets that are the subject matter of this Agreement; and/or
- 30.1.3 In the case of Owner, to an equity participant in the Project of less than fifty percent (50%).

However, the assignor shall ensure that the assignee is advised of and has accepted its obligations under this Agreement. Further, no assignment of this Agreement shall relieve the assignor of its existing obligations under this Agreement, including but not limited to financial obligations and obligations of non-disclosure, limited use, and non-analysis that had accrued under this Agreement prior to such assignment.

30.2 Remedies

With respect to that subject matter, circumstances or events for which a remedy is provided in this Agreement then such remedy is intended to be exclusive of any other remedies available to the Parties. If no such remedy is provided then the Parties shall have available to them any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by either Party shall not constitute a waiver by such Party of the right to pursue any other available remedies.

30.3 Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the Laws of the State of Washington, without reference to its conflict of laws principles. Venue for any litigation shall be in the

state or federal courts located in the State of Washington.

30.4 Notices

All notices, requests and consents provided for or given hereunder shall be in writing and shall be deemed properly given when transmitted in person, by recognized overnight express carrier or by facsimile as set forth below:

If to Contractor: Ken Tsurusaki - Project Manager - Cell 815-546-9098
CBI Services, Inc.
5500 South 1st Avenue
Everett, WA 98203

If to Owner: Jim Hogan - Consulting Project Manager - Cell 425-466-6934
Puget Sound Energy, Inc.
355 110th Ave NE - EST 09E
Bellevue, WA 98004

or to such other and different Person, address or facsimile number as designated by the Parties by notice given pursuant hereto. Notices delivered in person shall be deemed effective upon receipt thereof. Notices by recognized overnight express carrier shall be deemed given when received or refused by the addressee. Notices by facsimile shall be deemed given when receipt is confirmed by telephone.

30.5 No Waiver

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

30.6 Third Party Beneficiaries

This Agreement and each and every provision thereof are for the exclusive benefit of the Parties and not for the benefit of any other Person other than any Person who purchases, leases, or takes a security interest in the Project.

30.7 Severability

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

30.8 Further Assurances

Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement or to arrange construction or permanent financing (including leveraged lease financing and any refinancing) for the Project.

30.9 Counterpart Execution

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement may be delivered by facsimile or electronic transmission.

30.10 Not Used

30.11 Expenses

Each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution and delivery of this Agreement.

30.12 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereto, and supersedes all prior agreements and understandings between the Parties with respect hereto. Neither Party makes any representation, covenant, warranty or guarantee (express or implied), except as expressly set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Owner: Puget Sound Energy, Inc.

By: _____

Name: _____

Title: _____

Contractor: CBI Services, Inc.

By: 

Name: BRUCE A. FARETT

Title: SALES MANAGER, WESTERN REGION



21 OCT 2016

30.9 Counterpart Execution

This Agreement may be executed and delivered by the Parties in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement may be delivered by facsimile or electronic transmission.

30.10 Not Used

30.11 Expenses

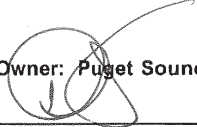
Each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution and delivery of this Agreement.

30.12 Entire Agreement


This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereto, and supersedes all prior agreements and understandings between the Parties with respect hereto. Neither Party makes any representation, covenant, warranty or guarantee (express or implied), except as expressly set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Owner: Puget Sound Energy, Inc.

By: 
Name: David E. Miller
Title: VP, Energy Operations

Contractor: CBI Services, Inc.

By: 
Name: BRUCE A. FABBET
Title: SALES MANAGER, WESTERN REGION



21 OCT 2016



CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



ATTACHMENT H

MILESTONE PAYMENT SCHEDULE



**CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA**



1. MILESTONE PAYMENT SCHEDULE

1.1 CB&I’s price is based on the following payments:

1.1.1 Down Payment

Upon contract award, CB&I will invoice [REDACTED] the Contract Amount.

1.1.2 Milestone Payments

CB&I will invoice based upon the milestone payment schedule shown in Table 4.1. At the end of each month, CB&I will invoice for the Milestone actually achieved during that month.

1.1.3 Final Acceptance

Upon achieving Final Acceptance, [REDACTED] of the Contract Price shall be due and payable.

1.1.4 Payment of Invoices

All invoices shall be paid via electronic funds transfer within 30 business days from the date of the invoice.

1.1.5 Washington State Sales and Use Taxes

Applicable Washington state sales and use taxes are to be added to the milestone values provided in Table 1.1 below.

Table 1.1 – Milestone Payment Schedule			
Milestone	Value (\$)	Milestone Payment Event	Milestone Payment Criteria
1	\$	[REDACTED]	[REDACTED]
2	\$	[REDACTED]	[REDACTED]
3	\$	[REDACTED]	[REDACTED]
4	\$	[REDACTED]	[REDACTED]
5	\$	[REDACTED]	[REDACTED]
6	\$	[REDACTED]	[REDACTED]
7	\$	[REDACTED]	[REDACTED]
8	\$	[REDACTED]	[REDACTED]

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CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



Table 1.1 – Milestone Payment Schedule

Milestone	Value (\$)	Milestone Payment Event	Milestone Payment Criteria
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			

Attachment H
Milestone Payment Schedule

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Puget Sound Energy, Inc.
Tacoma, WA



Table 1.1 – Milestone Payment Schedule

Milestone	Value (\$)	Milestone Payment Event	Milestone Payment Criteria
33	\$		
34	\$		
35	\$		
36	\$		
37	\$		
38	\$		
39	\$		
40	\$		
41	\$		
42	\$		
43	\$		
44	\$		
45	\$		
46	\$		
47	\$		
48	\$		
49	\$		
50	\$		
51	\$		
52	\$		
53	\$		
54	\$		
55	\$		
56	\$		
57	\$		
58	\$		

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Attachment H
Milestone Payment Schedule

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Table 1.1 – Milestone Payment Schedule

Milestone	Value (\$)	Milestone Payment Event	Milestone Payment Criteria
59	\$		
60	\$		
61	\$		
62	\$		
63	\$		
64	\$		
65	\$		
66	\$		
67	\$		
68	\$		
69	\$		
70	\$		
71	\$		
72	\$		
73	\$		
74	\$		
75	\$		
Total			

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Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA**



ATTACHMENT N CONTRACT PRICE



**CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA**



1.1 Contract Price

The Contract Price is a combination of a firm lump sum and provisional sum items listed below. The Contract Price is One Hundred Ninety Nine Million Seven Hundred Fifty Five Thousand Eight Hundred Forty Dollars (\$199,755,840). The Contract Price will be adjusted for the provisional items as described below. The Contract Price excludes state and local sales tax.

Limited Notice to Proceed authorized funds as of October 3, 2016 total [REDACTED]. Once paid the unpaid balance of the Contract price is [REDACTED].

1.2 Provisional Sum Items

Provisional sum items are subject to change based on (a) market conditions for and amounts of 9% nickel steel at time the order is fixed--as described below--and (b) for adjustment based on performance conditions encountered for the underground LNG pipeline, as also described below.

- (a) The nickel raw material contained within the 9% nickel plate steel material is included in the Contract Price as a provisional sum of [REDACTED] that is subject to adjustment in accordance with Paragraph 1.5 below.
- (b) The current provisional sum for the underground LNG Pipeline (\$11,907,377) is not included in the Contract Price and is subject to adjustment in accordance with Paragraph 1.6 below.

1.3 Not Used

1.4 Breakdown

The following table shows a breakdown where certain items included in the Contract Price are allocated.

Lump Sum Versus Provisional Sum Breakdown			
Item No.	Item Description	Included in Price as Firm, Lump Sum	Included in Price as a Provisional Sum
1.0	Permanent Material	X	
2.0	Nickel Raw Material in 9% Nickel Steel Plate		X
3.0	Underground LNG Pipeline	*	*
4.0	All Permanent Equipment	X	
5.0	Engineering Labor and Fringes	X	
6.0	Procurement Labor and Fringes	X	

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Lump Sum Versus Provisional Sum Breakdown			
Item No.	Item Description	Included in Price as Firm, Lump Sum	Included in Price as a Provisional Sum
7.0	Plate Structure Fabrication Labor and Fringes	X	
8.0	Construction Direct Labor, Fringes & Indirects	X	
9.0	Construction Supervision Labor and Fringes	X	
10.0	Small Tools and Consumables	X	
11.0	Construction Equipment	X	
12.0	Fuel	X	
13.0	Freight	X	
14.0	Project Management Team	X	
15.0	Overhead	X	
16.0	Mark-up	X	
17.0	Contingency	X	

* The underground LNG Pipeline is not included in either the Price as a Firm, Lump Sum or as an included provisional sum. Pricing for the underground LNG pipe is per paragraph 1.6 below.

1.5 Cost Adjustment for Nickel Plate Material

The Contract Price included in Contractor's proposal included presumptions of (a) the number of metric tons of 9% Nickel plate, (b) the unit price for this material, (c) the Nickel raw material content in the Nickel plate, and (d) the US Dollar-Euro conversion rate.

The Subcontractor cost proposal was based on (a) 457 metric tons of Nickel plate material, (b) a unit price of [REDACTED] US Dollars per Metric Ton for "3 Month Seller" of Nickel base material as published on the London Metal Exchange (LME) as of [REDACTED] (c) a [REDACTED] factor for Nickel raw material content, and (d) no conversion required as the price is based in US dollars. The provisional sum included in the Contract Price is thus $457 \times [REDACTED] \times [REDACTED] = [REDACTED]$.

Any change in these presumptions from the June 28, 2016 pricing to the time the cost is fixed shall be the subject of a Contract Price Change Order based upon the following formula on the following potential occasions: (1) when the information reflected in the presumptions is fixed or (2) if the number of metric tons changes as described in Note 3 below or (3) the Nickel content percentage as described in Note 4 below or (4) Euro adjustment as described in Note 5 below.



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The Subcontractor will release its tonnage order to selected mill as soon as possible and within four weeks of contract award, and the mill is expected to lock in the rate in 4 to 6 working days after receipt of the tonnage purchase order. (The locked-in rate will depend on the delivery schedule required for the project.) This actual Nickel price, the actual Nickel raw material content in Nickel plate, and the exchange rate between USD and EURO will be used along with the formula below to fix the value of the provisional sum.

$$A = (\text{NiFC} - \text{NiEC}) \times \text{NiPQ} \times \text{NiQ}\% + \text{Euro Adjustment}$$

Where:

NiFC	TBD	Actual Nickel price in USD/metric ton, based on final cost of Nickel raw material per Note 1 below.
NiEC	USD [REDACTED]	Nickel price USD/metric ton used in proposal, see Note 2.
NiPQ	457	Metric tons of 9% Nickel Plate included in the proposal, see Note 3.
NiQ%	[REDACTED]	Nickel raw material content in Nickel Plate [REDACTED] of plate weight per supplier's quote), see Note 4.
A	=	Total value of material cost adjustment. *Plus Euro adjustment when necessary, see Note 5.

Note 1: NiFC (Nickel Final Cost) is the final purchase cost of Nickel base material, based on actual price paid by the mill. (NiFC will be confirmed to Owner based on the mill's purchase commitment for Nickel and the mill's written confirmation stating the actual purchase price of Nickel material per metric ton.)

Note 2: NiEC (Nickel Estimated Cost) represents the quoted cost of Nickel material used in Contractor's proposal, based on LME rate for Nickel "3-Month Seller" on [REDACTED] (USD [REDACTED] per Metric Ton).

Note 3: NiPQ represents the total estimated weight of Nickel Plate for all 9% Nickel Plate material. The total estimated weight of 9% Nickel Plate for tanks is 457 metric tons.



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Note 4: Nickel content in the proposal was based on [REDACTED] of total plate tonnage per supplier (ArcelorMittal) quotation dated June 28, 2016. The total tonnage of plate is 457 metric tons x [REDACTED] = [REDACTED] metric tons Nickel raw material. This amount is subject to adjustment depending on the supplier chosen. (The suppliers have varying nickel contents within the range of [REDACTED] to [REDACTED])

Note 5: The Contract Price will be adjusted for the actual conversion rate in effect at the time when the information reflected in the presumptions is fixed or if the metric tons change, both as described above. When the mill is based in Europe, then all conversions from USD or Euro by the supplier of Nickel plate shall be based on the ECB rate as published under;
www.ecb.europa.eu/stats/exchange/eurofxref/html/eurofxref-graph-usd.en.html.

1.6 Provisional Sum – Underground LNG Pipeline

In order to reduce the risk and contingency associated with this project, the current EPC Contract Price does not include the provisional sum of \$11,907,377 for the underground LNG pipeline scope of Work. The provisional sum price was established by the removal of the following scope items for the underground LNG pipeline:

- Sheet piling related to the ramp and pit
- Excavation and dewatering
- Coring and sleeve installation
- Handling of the excavated materials
- Any required civil and concrete work with the ramp and pit
- Purchase and freight of the pipe materials
- Assembly of the Piping
- Purchase and assembly of the trolleys
- Installation of the Pipe & Trolley into the tunnel
- All coatings and insulation of the piping and other components
- Testing, commissioning, modification and repair

Contractor will perform the above items, and Owner will compensate Contractor for this performance through a Change Order in the Contract Price, on a time-and-material basis utilizing the components, rates and mark-ups listed in Attachment O. However, since project management and engineering is included in the Contract Price, neither will be included or added as a component of the underground LNG pipeline compensation. However, if the scope for the underground LNG pipeline changes any additional project management and engineering needed will be included in the Change Order amount.



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Puget Sound Energy, Inc.
Tacoma, WA



ATTACHMENT O

COSTS



CB&I #186512
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



1. DIRECT COSTS AND RELATED MARKUP

1.1 Direct Costs

The term “Direct Cost” means those actual, net costs reasonably incurred by the Contractor in the proper performance of the Work, without overhead, profit, fee or markup. The Direct Cost shall include only the following categories:

- 1.1.1 Wages and benefits required by law or collective bargaining agreements paid for construction workers in the direct employ of the Contractor while performing that part of the Work on Site;
- 1.1.2 Salaries, wages and benefits of the Contractor’s hourly or salaried site office personnel including site foremen and site superintendents, when stationed at the Project Site;
- 1.1.3 Salaries, wages and benefits paid for the Contractor’s personnel performing any Work;
- 1.1.4 Contributions, assessments or taxes incurred by the Contractor during the performance of that part of the Work and which are levied on salaries of personnel for such items as unemployment insurance, workers’ compensation, insofar as such costs are based on the wages, salaries, or other remuneration paid to the Contractor for employees;
- 1.1.5 The portion of travel and subsistence expenses of the Contractor’s employees incurred while travelling in discharge of duties connected with that part of the Work and approved by Owner;
- 1.1.6 Materials, products, supplies and equipment incorporated into that part of the Work, including costs of transportation thereof;
- 1.1.7 Materials, products, supplies, equipment, temporary services and facilities, and an hourly allowance for small tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of that part of the Work;
- 1.1.8 Rental costs (not to exceed the local fair market rental costs) of all tools, machinery, and equipment, exclusive of hand tools, used in the performance of that part of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof;
- 1.1.9 With respect to that part of the Work that is performed by a Subcontractor, the actual amount paid by the Contractor to the Subcontractor for such work;



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1.1.10 Charges levied, excluding sales tax, by Governmental Authorities in respect of that part of the Work, not including fines or penalties; and charges for long distance toll charges, courier services and expressage incurring in connection with that part of the Work.

1.2 Markup

“Markup” means [REDACTED] of Direct Cost. (Markup \$ / Direct Cost \$ = [REDACTED])

1.3 Cost

“Cost” means the sum of Direct Cost plus Markup.

1.4 Sales Tax

Washington State Sales Tax is applied to Owner payments of Direct Costs and Markup.

2. CONTRACTOR RATE SCHEDULES

When Contractor is to be compensated for reimbursable Time and Materials (T&M) work, including provisional sums, the rates specified in the this Section 2 shall be utilized, without fee or markup.

2.1 Contractor Rate Schedule – Management Staff and Project Team

Contractor’s Rate Schedule		
Discipline	ST Rate	OT Rate
Project Management Staff and Engineering in Home Office	(per hr)	(per hr)
Project Manager	[REDACTED]	[REDACTED]
Commercial / Subcontracts Manager	[REDACTED]	[REDACTED]
Safety Manager	[REDACTED]	[REDACTED]
Safety Engineer/Technician	[REDACTED]	[REDACTED]
Weld/QA Manager	[REDACTED]	[REDACTED]
Weld Engineers	[REDACTED]	[REDACTED]
QA/QC Engineers	[REDACTED]	[REDACTED]
Estimator	[REDACTED]	[REDACTED]
PC Manager	[REDACTED]	[REDACTED]
PC Leads	[REDACTED]	[REDACTED]
Project Controls Specialists	[REDACTED]	[REDACTED]
Document Controls	[REDACTED]	[REDACTED]

Attachment O
Costs

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Puget Sound Energy, Inc.
Tacoma, WA



Contractor's Rate Schedule		
Discipline	ST Rate	OT Rate
Project Accounting		
Procurement Management		
Logistics Specialist		
Buyers		
Expeditors		
Subcontracts		
Materials Specialist		
Construction Manager		
Commissioning & Startup Manager		
Commissioning & Startup Personnel		
Project Engineering Manager		
QA/QC Inspectors		
Scheduler/Planner		
Senior Project Engineer		
Project Engineer		
Process Engineering Manager		
Process Engineer		
Process Design		
Civil Engineer		
Civil Design		
Mechanical Engineer		
SPS Engineering		
Piping Engineer		
Piping Design		
Electrical Engineer		
Electrical Design		
I&C Engineer		
I&C Design		
Engineering IT Personnel		
Clerical		
Project Management Staff When Resident at the Project Site	(per hr)	(per hr)
Project Manager		
Commercial/ Subcontracts Manager		
Senior Project Engineer		

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Tacoma, WA



Contractor's Rate Schedule		
Discipline	ST Rate	OT Rate
Safety Manager		
Safety Engineer/Technician		
Weld/QA Manager		
QA/QC Inspectors		
Commissioning & Startup Manager		
Commissioning & Startup Personnel		
Scheduler/Planner		
Accountant/Cost Engineer		
Subcontract Coordinator		
Material Control Supervisor		
Construction Manager		
Project Engineer		
Construction Engineer		
Admin/Document Control		
Field Engineer		

Note: The rates shown in the above table are valid through the end of 2016. The rates may be adjusted not more frequently than annually in accordance with Contractor's normal review practices and shall not exceed rates charged on similar projects.

2.2 Travel and Out of Office Expenses

All reasonable and verifiable out-of-office expenses for pre-approved travel incurred while supporting the Work will be reimbursed to Contractor at Cost for travel, meals and lodging expenses to and from an individual's primary Contractor office.

2.3 Living Allowance

Project staff transferred to the Project site by Contractor shall, with Owner's pre-approval, receive a living allowance that will be invoiced by Contractor at no more than Cost per week, unless otherwise agreed by the Parties in advance.

2.4 Administrative Costs and Markup

The rates identified in these Rate Schedules of this Section 2 are inclusive of all costs, including overhead, profit, fee and markup for the services provided by Contractor personnel.

Attachment O
Costs

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Puget Sound Energy, Inc.
Tacoma, WA



2.5 Contractor Rate Schedule – CB&I Direct Hire Craft and Field Supervision

Contractor's Rate Schedule			
Classification	ST Rate	OT Rate	Double Time Rate
Site Supervision	(per hour)	(per hour)	(per hour)
Supervision			
CB&I Sr. Foreman			
CB&I Foreman			
CB&I Pusher			
CB&I Sr. Welding & QA Supervisor			
Local General Foreman			
Local Foreman			
Insulator Foreman			
Ironworker Foreman			
Craft	(per hour)	(per hour)	(per hour)
Boilermakers			
Boilermaker Journeyman			
Boilermaker Apprentice			
Ironworkers			
Ironworker Journeyman			
Ironworker Apprentice			
Millwright			
Millwright			
Laborers			
Laborer			
Operators			
Operating Engineer Grp I			
Operating Engineer Grp IA			
Operating Engineer Grp II			
Operating Engineer Grp III			
Pipefitters			
Pipefitter Journeyman			

Other craft rates to be established as needed and/or applicable. The craft rates shown in the above table are valid through the end of 2016 and will be adjusted in accordance with increases associated with future union contract renewals. Rates include all wages, benefits, payroll taxes, insurance, overheads, markups, and an allowance for small tools and consumables.

Attachment O
Costs

SHADED INFORMATION IS
DESIGNATED AS CONFIDENTIAL PER
WAC 480-07-160

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REDACTED VERSION



CB&I #186512
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



2.7 Travel and Truck Allowance

Contractor personnel, craft and supervision, receive travel pay at the IRS rate for mileage and daily subsistence at Cost.

Select Contractor supervisors including but not limited to Superintendents, Foreman and QA Supervisors receive a weekly truck allowance at Cost.

2.8 Subcontractor and Materials

Subcontracts and Materials will be invoiced at Cost.

2.9 Contractor's Construction Equipment

Contractor-owned equipment and 3rd Party Rentals will be invoiced at the blue book rate or actual rental price plus a 15% markup. Rentals from Contractor or any entity in which Contractor or one or more of its owners has a direct or indirect ownership interest shall be separately accounted for, and the rental rates shall not exceed fair market rental rates.



CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



ATTACHMENT P
CONTRACT UPDATES
SPECIAL CONDITIONS



CB&I #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



1.0 Overview

- 1.1** The purpose of this Attachment P is to capture changed scope conditions from the October 30, 2015 EPC Contract Documents and update those Contract documents to reflect current agreements. Attached is Change Log P-1 reflecting the items included or addressed. Items listed in Change Log P-1 take precedence over any other differing provisions earlier or elsewhere in this contract. Schedule, scope and pricing considerations for Change Log P-1 items are included in Attachments C (rev 1 dated 7-20-2016), I (rev 4 dated 7-20-2016) and N (7-13-2016) respectively.



CBI #210140
Tacoma LNG Project
Puget Sound Energy, Inc.
Tacoma, WA



Change Log P-1 - Contract Updates

CCN #	Title/Short Description	Originated by	Reason	Comment
1	Loading Arm for TOTE is supplied with a Mann-Tek flange . Loading arm suppliers are not comfortable with this detail. Change is to use a more appropriate PERC-type fitting.	TOTE	Safety	6" #150 RF main LNG flange is a Manual QCDC. 2" #150 RF Vapor return flange
2	The current plan is for PSE to install the underground FireWater pipe as designed by CBI. Change is for CBI to supply and install the underground portion of the FW system	PSE	Change in Scope	FW pipe is assumed to be Approx 6 ft to bottom of pipe trench. Assume piping is laid to miss all grout columns. Installed after foundation pours and before backfill
3	S&H proposed a berm around a majority of the site . CBI to maintain the berm and backfill the site after foundation installation. Cost of maintenance of the drainage, truck wash station, settling pond and Baker Tanks to be defined.	Sitts&Hill	Change in Scope	PSE Scope PSE to keep stormwater management, equipment supply, baker tanks, berm, truck wash and street sweep. Approximate duration for SWWP control is 9 month process + 10 months more for tank roof pour.
4a	PSE proposed that the site be left at the top of bearing pad elevation . CBI would then build the foundation and backfill the bathtub.	PSE	Change in Scope	Backfill for entire site to grade just below final grade. Based on re-use of existing soil stockpiled on site. Does not include any imported material supply. Yard rock supply and install by others. Quantity based on Sitts&Hill calculation dated 3June2016.
4b	PSE proposed that the site be left at the top of bearing pad elevation . CBI would then build the foundation and backfill the bathtub.	PSE	Change in Scope	Deduct excavation and backfill after foundation installation is included in the current price
5	Move the fence line inland on the Hylebos to allow for a 50 ft vegetation buffer zone.	Permit	Change in Scope	Decrease 100' of fence, cable and 1 light pole
6	TOTE will not have the LNG barge available for interim loading and have switched to a land based truck loading plan. Change is potential interference due to the truck loading	TOTE	Safety	Potential Change not included in current Price - To be priced when work scope is defined. May include any additional workscope required to support the interim use, ie pipe spools, flanges, valves, etc.
7	TOTE is considering using the permanent loading facility as the interim solution. May require expedited loading arm release and some supporting systems. Coast Guard clarification on what the interim requirements would be needs to be defined	TOTE	Change in Scope	Early delivery, installation and interim commissioning of the Marine Loading Arm. Target installation by June 2017
8	Delay in contract award due to potential appeal of the EIS - Need to define full release date to price total cost and schedule affect	PSE	Client Request	Price update to account for Project Team time, wage increases from 2015 to 2016 for all employees and crafts, material and subcontract costs.
9	Multiple release of site - 4 areas to be released sequentially by ground improvement. Review schedule impact of plan	PSE	Change in Scope	Potential Change - Sequence and scope of soil improvement are critical to the execution of the Work.
10	Stormwater restriction and the bathtub must remain in place until concrete is placed. For the tank that means until the roof is poured .	Permit-Stormwater	Change in Scope	Inefficiencies of limited access caused by the SWPP controls
11	Jetty to be isolated from the ground . CBI will have to include for movement between the Jetty and the ground in piping design	Moffatt & Nichol	Change in Scope	Expansion loop added to design, includes piping, supports and foundation
12	Fire Dept requested Firewater system to allow for boost pump pressure up to 200 psi. Also requested hydrants be within 4' of the roads. They do not need hydrants at the monitors that are located away from the road. Add turn around loop at dead-ends of roads .	Permit- TFD	Safety	Asphalt required for Fire Engine turn around. Firewater Piping to handle 200 psi.
13	GeoEngineers advised that the 12" bearing pad would not provide uniform stiffness. CBI would have to design all foundations as pile caps. Work with GeoEngineers to define solution and determine cost/schedule impact. Reduce cost by using a combination of full bearing & stiffness and pile cap design around the site.	GeoEngineers	Change in Scope	Based on the tank foundation design as a shallow foundation with uniform bearing and Process foundations a mix of shallow and pile-cap designs to accommodate the thin bearing pad.
14	TOTE requires all LNG to be drained back to shore, including the pipe to the fuel tanks on the ship. Wartsila allowed for gravity feed on the ship.	TOTE	Change in Scope	Marine Loading Arm design to accommodate the drainback LNG from the ship piping.
15	Include Control Building in facility power grid	PSE	Change in Scope	Add power connection and transformer to power the building. Potential Change to be revisited once temporary power is determined and if any of the temporary system can be reused for permanent power.
16	The pier design accommodates the axle loads of a Tacoma Fire Department engine. They looked at the impacts of your mobile crane load and it resulted in an additional 3 piles, an increase of pile diameter, and an increase in pile depth. Given the capital costs of those impacts, PSE is unwilling to design/construct the pier for a one-time mobile crane load. You should plan for and budget to use a floating crane to install the loading arm. From what I am told, a floating crane is around \$12-15k per day.	PSE	Client Request	Barge Crane use is included in the current plan
17	TOTE request an alternate loading arm design based on the mooring line moved to the center of the ship. This would eliminate the need for the loading arm to go up-&-over the mooring line	PSE	DELETED	N/A - alternate design is not required
18	WUTC added Cathodic Protection to the Casing of the U/G pipeline. PSE advised that an anode at the end of the casing would suffice to meet this requirement pe Email J Hogan 20April16	PSE	Change in Scope	Potential Change not included in current Price- To be priced when work scope is defined
19	WUTC memo describing requirement for waiver of underground containment. To be reviewed for scope changes	PSE	Client Request	Potential Change not included in current Price- To be priced when work scope is defined
20	Air Permit request additional information. Possible change to ultra-low NoX. Put on HOLD on 10May2016	PSE	Client Request	Potential Change not included in current Price- To be priced when work scope is defined
21	Spare Parts Order for the Loading Arm -- €27,929 + shipping & handling	PSE	Change in Scope	Spare parts for Marine Loading Arm are included in the current price
22	Place Holder- WUTC to review the U/G pipeline design (Potential change for additional support calculations and/or changes demanded by the review) No definition as of 2June16	PSE	Client Request	Potential Change not included in current Price- To be priced when work scope is defined
23	City of Tacoma adopts updated codes effective 1July2016 Codes affected are: Building (IBC), Residential (IRC), Fire (IFC), Existing Building (IEBC), Mechanical (IMC), Fuel & Gas Code (IFGC), Plumbing (UPC), Washington State Energy Code (WSEC)	PSE	Client Request	Potential Change not included in current Price- To be priced when work scope is defined