8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 Delays and Extensions of Time

8.3.1 The Contractor shall proceed with each and every part of this Agreement in a prompt and diligent manner. The Contractor, without additional compensation, shall perform the Work at such times, in such order and in such manner as the Owner may direct. The Contractor shall commence, continue and complete its performance of the Project so as not to delay Owner or other separate contractors of the Owner or subcontractor's completion of the Work or any portions thereof, and so as to insure completion of the Work, or portion thereof, is a material provision of this Agreement, and time is of the essence. The Contractor shall furnish sufficient forces to assure proper performance of its Work in strict compliance with all performance or progress schedules for the Project.

8.3.2 The Contractor shall, from time to time, on written demand of Owner, give adequate evidence to Owner to substantiate the planned performance and progress of the Work and the various parts thereof. The Contractor shall promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, all without additional compensation, it in the opinion of the Owner, such work is necessary to maintain proper progress. The Contractor will fully cooperate and coordinate its work with any other separate contractors of Owner or subcontractors at the Project. The Contractor shall bear the costs of all damages done to other separate contractors of Owner or subcontractors and shall be responsible for any damages caused by or resulting from acts or omissions of the Contractor in failing to make proper progress. The liability of the Contractor shall not be deemed waived by any assent or acquiescence by Owner to the Contractor's late performance. Owner shall be entitled to terminate this Agreement due to late or threatened late performance, upon seven (7) days notice to proceed and Contractor's failure to do so.

8.3.3 In the event any subcontractor should damage the Contractor, the Contractor shall neither seek nor be entitled to any compensation from Owner, but will seek its damages directly from such subcontractor. Should the Contractor's performance in

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whole or part, be disrupted, interfered with or delayed, or be suspended in the commencement, prosecution or completion, for reasons beyond the Contractor's control and without its fault or negligence, the Contractor shall be entitled to an extension of time in which to complete its Work; but only if it shall have notified the Owner, in writing, of the cause of delay within five (5) days of the occurrence of the event. The Contractor and Owner agree that the Contractor shall not be entitled to any money damages regardless of fault as a result of any delay, acceleration, disruption, interference, suspension or other event affecting the Contractor or the Contractor's performance.

ARTICLE IX
PAYMENTS AND COMPLETION

9.1 Contract Sum

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

9.2 Schedule of Values

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 Applications for Payment

9.3.1 At least ten days before the date of each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Engineer an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Engineer may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall indicate on each Application for Payment the dollar amount and percentage due Subcontractors.

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Progress payments (monthly) will be made based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer Pursuant to Section II of the Contract entitled Method of Payment.

9.3.1.1 Until final payment, the Owner will pay 90%or the amount required by law due the Contractor on account of progress payments. If the manner of completion of the Work and its progress are and remain satisfactory to the Owner, it may, in its sole discretion, for each Work category shown to be 50% or more complete in the Application for Payment, without reduction of previous retainage,on presentation by the Contractor with Consent of Surety for each application, certify any remaining progress payments for each category to be paid in full.

9.3.1.2 The full Contract retainage may be reinstated at any time in the sole discretion of the Owner.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in Article IX as Aliens; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other persons performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

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9.3.4 The Contractor shall submit a report with each Application for Payment which sets forth all subcontractors performing work during that reporting period, the dollar amount paid to the subcontractor, etc. on the form provided by Shelby County Government.

9.4 Certificate for Payment

9.4.1 The Engineer will, within seven (7) days after the receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the Owner for such amount as the Engineer determines is properly due.

9.4.2 The issuance of a Certificate of Payment will constitute a representation by the Engineer to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified.

9.5 Progress Payments

9.5.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.6 Payments Withheld

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9.6.1 The Engineer may decline to certify payments and may withhold his Certificate in whole or in part, to the extent necessary to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2. The Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time; or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made, without interest, for any amounts previously withheld.

9.7 Substantial Completion

9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract

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Documents. When the Engineer on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.7.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents. Payment by the Owner upon application by the Contractor and certification by the Engineer for Substantial Completion does not waive any claims the Owner may have against the Contractor.

9.8 **Final Completion and Final Payment**

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.7.2 have been fulfilled.

9.8.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible,

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have been paid or otherwise satisfied, (2) consent of surety to final payment and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims, encumbrances and/or alleged liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

9.8.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE X
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 Safety of Persons and Property

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

.1 all employees on the Work and all other persons who may be affected thereby;

.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

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.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Pavements, sidewalks, alleys, adjacent buildings not included in this Contract, which may be damaged, shall be repaired and/or replaced immediately and in a manner satisfactory to the Engineer, Shelby County and/or other governing officials.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, Subcontractor, or any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor may be liable or responsible. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.16.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Engineer.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

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10.3 Emergencies

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article XII for Changes in the Work.

10.3.2 Whenever the Contractor has not taken sufficient precautions for the safety of the public or the protection of work to be performed under this Project, or adjacent structures or property which may be injured by processes of construction, demolition and/or site clearance on account of such neglect, and whenever an emergency shall arise and immediate action shall be considered necessary in order to protect public or private, persons or property interest, then the Engineer and/or the Owner shall so instruct the Contractor.

10.3.3 If correction is not made in due time or if conditions such as lack of time prevent instructions to Contractor, then the Owner, without notice to the Contractor, may provide reasonable, suitable protection by causing such Work to be done and material to be furnished and placed as the Engineer and Owner may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills thereof, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work under the direction of the Owner and/or Engineer shall in no way relieve the Contractor of the responsibility for damages which may occur during or after such performance.

10.3.4 None of the foregoing shall make the Owner and/or Engineer responsible for foreseeing and protecting against emergency.

ARTICLE XI
INSURANCE

11.1 Contractor's Liability Insurance

11.1.1 The Contractor shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the Owner from claims set forth below which may arise out of or result from the Contractor's

operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor or Subcontractor may be liable:

.1 claims under workers' compensation, disability benefits and other similar employee benefit acts;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

.4 claims for damages insured by personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

.5 claims for damages, other than the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. The Contractor shall maintain throughout the life of his Contract, liability insurance, written in a comprehensive form, satisfactory to the Owner in the following minimum requirements:

.1 Worker's Compensation coverage as required by Tennessee Statute. Employers Liability will be provided in a minimum of $100,000.00 without restriction as to whether covered by the Worker=s Compensation Law.

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.2 Commercial General Liability with minimum liability limits of no less than $1,000,000.00 per occurrence premises operations/$2,000,000.00 general aggregate/$2,000,000.00 products completed operations aggregate; $1,000.000.00 personal and advertising injury. Coverage is to include contractual liability, perils of explosion, collapse, and underground hazards, all independent contractors, and the equivalent of the broad form property damage form.

.3 Business Automobile Liability no less than $1,000,000.00 each occurrence on all owned, hired and non-owned autos.

.4 Owner's and Contractor's Protective Liability in a minimum limit of $1,000,000.00 each occurrence, and $1,000.000.00 Shelby County Government, its elected officials, appointees, employees and volunteers, members of boards, agencies, and commissions will be the insured.

.5 Property Damage: Minimum limits of $500,000.00 each occurrence; $500,000.00 aggregate builder's "all risk" in the amount of the Contract with Shelby County Government named as the additional insured. Such insurance carried by the Contractor shall include a $1,000.00 deductible amount will be the responsibility of the County.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.16.

11.1.4 All insurance policies maintained by the Contractor shall provide that insurance as applying to the Owner shall be primary and non-contributing irrespective of such insurance as the Owner may maintain in its own name and on its own behalf.

11.1.5 Certificates of Insurance acceptable to the County shall be filed with the County at the time of submittal of the Contract Documents to the County for execution. These certificates shall

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contain a provision that coverages afforded under the policies will not be cancelled until at lease (30) days prior written notice has been given to the Owner. Upon request of the Owner, certified copies of any of the required insurance policies may be requested from the Contractor or Contractor's insurance company, agency, or broker.

11.2 Owner's Liability Insurance

11.2.1 The Owner shall at its discretion, purchase liability insurance or maintain a self-insured liability program.

11.3 Property Insurance

11.3.1 The General Contractor shall be responsible for all risk insurance for physical loss or damage including flood, earthquake and boiler and machinery coverage for the project during construction until the project is accepted by the Owner at which time the Owner will provide the property coverage.

11.3.2 The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require such Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.3.3 The Contractor or his insurance agent, broker or insurance company shall furnish to Owner a copy of all policies with the Contactor within five days of request.

11.3.4 If the Owner requests in writing that insurance for risks other than those described in Subparagraphs 11.3 and 11.3.2 or 11.3.3 or other special hazards to be included in the property insurance policy, the Contractor shall, if possible, include such insurance, and the cost thereof shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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ARTICLE XII
CHANGES IN THE WORK

12.1 Change Orders

12.1.1 A Change Order is a written order to the Contractor signed by the Owner issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. The Contractor by execution of the Change Order waives any further claims or damages in any manner whatsoever for the changes set forth in the Change Order.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

.1 by lump sum properly itemized on the form furnished by the Owner which shall show the actual verified cost of the work, plus ten percent overhead and five percent profit; if the work is performed by a Subcontractor, the General Contractor is allowed an additional five percent;

.2 by unit prices stated in the Contract Documents or subsequently agreed upon;

.3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 by the method provided in Subparagraph 11.1.4.

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12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2, or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit, which shall be defined as ten percent overhead and five percent profit with an additional five percent going to the General Contractor when the work is performed by a Subcontractor. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of labor, including social security, old age and unemployment insurance and fringe benefits required by agreement or custom; workers or workmen's compensation insurance; bond premiums, rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Engineer's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

12.2 Concealed Conditions

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, Contractor, subject to approval by the Engineer, shall be entitled to a time extension for only the period that the Contractor's performance is extended due to the unforseen conditions.

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12.3 Minor Changes in the Work

12.3.1 The Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE XIII
UNCOVERING AND CORRECTION OF WORK

13.1 Uncovering of Work

13.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Engineer has not specifically requested to observe prior to being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay such costs. If the Work to be uncovered by the Contractor should have been inspected by the Engineer prior to being covered, and the Work is found to be in accordance with the Contract Documents, the cost of the uncovering and recovering of the Work shall be borne by the Engineer.

13.2 Correction of Work

13.2.1 The Contractor shall promptly correct all Work rejected by the Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Engineer's additional services made necessary thereby.

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