

WAHA OIL COMPANY

SECTION 3 - CONSTRUCTION CONTRACT CONDITIONS

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SECTION 3

CONSTRUCTION CONTRACT CONDITIONS

3.000 DEFINITIONS, INTERPRETATIONS AND INTENT

- 3.001 *In the CONTRACT as defined in Section 3.005 hereof the following words and expressions shall have the meanings herein assigned to each except where the context requires otherwise.*
- 3.002 *"WAHA" shall mean Waha Oil Company, its successors and assigns.*
- 3.003 *"CONTRACTOR" shall mean the person, firm, corporation or establishment to which WAHA has awarded the CONTRACT and shall include CONTRACTOR'S personal representatives, successors and authorized assigns.*
- 3.004 *"WORK" shall mean all work and construction to be performed in accordance with the CONTRACT.*
- 3.005 *"CONTRACT" shall mean all the Contract Documents, consisting of the Agreement and each document which is referred to and identified in the Agreement as a part thereof or incorporated therein.*
- 3.006 *Unless clearly stated to the contrary, any statement to the effect that CONTRACTOR will "furnish" or "supply" an item means that CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall be responsible for purchase, transportation to the jobsite or other location specified and, if appropriate, installation thereof of the subject item.*
- 3.007 *Any statement to the effect that WAHA shall "furnish" or "supply" an item means that without cost to CONTRACTOR, WAHA shall provide transport to the jobsite or other location specified and make said item available to CONTRACTOR at such location.*
- 3.008 *Should any provision in these CONSTRUCTION CONTRACT CONDITIONS conflict with a provision in any other Contract Document constituting a part of the CONTRACT, then the provision as written in the CONSTRUCTION CONTRACT CONDITIONS, or otherwise, shall take precedence and control in the order in which the Contract Documents are listed in the Agreement, with the provisions of the Agreement taking first precedence.*
- 3.009 *The Contract Documents are complementary and anything required by one shall be as binding as if required by all. The intent of the Contract Documents to include in the total Contract price, the cost of all CONTRACTOR-furnished labor, equipment, materials, supplies, transportation and all other expenses requisite to proper execution and completion of the WORK, equipment, materials, supplies or work described*

in words having a recognized technical or trade meaning, unless otherwise specifically defined in the Contract Documents shall be construed in accordance with such recognized meaning.

3.010 STANDARD OF PERFORMANCE

3.011 *CONTRACTOR shall devote its best efforts and experience to performance of the WORK and shall not withhold the use of any improved techniques, equipment, or skills because of the geographical location thereof. CONTRACTOR warrants that the WORK shall be performed with due diligence, in a good and workmanlike manner, and in accordance with the highest standards prevailing in the Petroleum Industry, as well as with those established by WAHA from time to time.*

3.020 PERSONNEL TO BE PROVIDED BY CONTRACTOR

3.021 *Unless otherwise expressly provided in the Contract Documents, CONTRACTOR shall provide all personnel required in performance of the WORK. All wages, salaries and expenses of whatsoever nature arising from the employment, support and maintenance of such personnel shall be CONTRACTOR'S responsibility and expense including, but not limited to food, lodging, medical attention and all transportation required for CONTRACTOR'S personnel. All costs, expenses and charges for benefits of any kind which accrue to any employee of CONTRACTOR shall be for the sole account of CONTRACTOR and shall include, without limitation, overtime, vacation, severance, restday and holiday pay as well as compensation due on account of accident, sickness and disability of any employee of CONTRACTOR.*

3.030 UNDESIRABLE EMPLOYEES

3.031 *If WAHA considers that any person employed by CONTRACTOR in performance of the WORK is incompetent or negligent or whose employment is otherwise deemed by WAHA to be undesirable, CONTRACTOR shall, upon WAHA'S request and at CONTRACTOR'S expense, forthwith remove the said employee and promptly provide a replacement therefor acceptable to WAHA.*

3.040 SAFETY

3.041 *In performing the WORK, CONTRACTOR shall adhere to pertinent safety practices and shall comply with all applicable safety regulations, including those established by WAHA from time to time as set forth in WAHA'S current Safety Manual i.e. section H007 – Health, Safety and Environment (HSE) Contractual requirements which is available at WAHA'S main office for CONTRACTOR'S inspection at any time. Such practices and regulations shall be regarded as minimum requirements, and CONTRACTOR shall institute such additional safety precautions as circumstances indicate are appropriate.*

3.042 WAHA shall have the right at any time to suspend the WORK for reasons of safety. The duration of such suspension shall be at the discretion of WAHA. Following such suspension, CONTRACTOR shall not, under any circumstance, resume the WORK without written authorization from WAHA.

3.050 EQUIPMENT, MATERIALS AND SUPPLIES

3.051 Unless otherwise expressly provided in the Contract Documents, CONTRACTOR shall furnish at jobsite all equipment, materials and supplies required in the WORK, whether the same are to be permanently incorporated therein or employed in construction thereof. All costs of operating, maintaining and repairing construction equipment shall be at CONTRACTOR'S account.

3.052 All equipment, materials and supplies to be furnished by CONTRACTOR for permanent construction shall be new and shall comply in all respects with the construction specifications.

3.053 Any equipment, materials and supplies to be furnished by WAHA, together with the locations where WAHA will make the same available to CONTRACTOR, shall be set forth in either the Agreement or the construction specifications or the Instructions to Bidders. In the absence therein of specific identification thereof all such equipment, materials and supplies shall be furnished by CONTRACTOR.

3.054 In the event that the construction specifications require WAHA to furnish equipment, materials or supplies, WAHA transfer forms shall be used to establish the quantities and types thereof as well as the location where the same are to be made available to CONTRACTOR. Quantities and types thereof shall be determined by inventories conducted jointly by WAHA and CONTRACTOR as deliveries are made by WAHA. Following receipt thereof by CONTRACTOR, all damage, loss or destruction of the same regardless of cause shall be at the sole risk and expense of CONTRACTOR.

3.055 In the event that WAHA'S equipment, materials or supplies are damaged lost or destroyed while in CONTRACTOR'S custody, CONTRACTOR shall promptly repair or replace the same at CONTRACTOR'S expense and to WAHA'S satisfaction.

3.056 Delays in the WORK due to repair or replacement of damaged, lost or destroyed equipment, materials or supplies shall not result in extending any date specified in the Contract Documents for completion of the WORK.

3.057 The responsibility and expense of loading out WAHA-furnished equipment, materials and supplies at the location where the same are to be made available to CONTRACTOR, as well as costs of transportation of the same to the jobsite, shall be at the account of CONTRACTOR.

3.058 Maintenance, operation and repair of WAHA-furnished construction equipment in CONTRACTOR'S custody shall be at CONTRACTOR'S expense.

3.059 In the event that WAHA determines that equipment supplied by CONTRACTOR is inadequate for timely completion of the WORK, WAHA shall have the right to require CONTRACTOR to furnish additional equipment of types and in quantities to be specified by WAHA.

3.059A Upon completion of the WORK, CONTRACTOR shall return WAHA-furnished equipment, surplus materials and supplies to field storage points to be designated by WAHA, where the same shall be racked neatly by CONTRACTOR before delivery thereof to WAHA shall be deemed complete.

3.060 PAYMENT OF BILLS

3.061 CONTRACTOR shall make prompt settlement of all invoices and charges for labor, equipment, supplies, utilities and facilities which CONTRACTOR furnishes in performance of the WORK.

3.070 FACILITIES FURNISHED BY CONTRACTOR

3.071 All facilities furnished by CONTRACTOR for use of CONTRACTOR'S employees, specifically including but not limited to CONTRACTOR'S work camps, if any, shall comply with applicable Laws and Regulations (including those pertaining to sanitation) as well as regulations established by WAHA from time to time.

3.072 All such facilities shall be located in a WAHA-approved area at a minimum distance of one (1) kilometer from any permanent WAHA camp. CONTRACTOR'S camp facilities shall be completely independent and CONTRACTOR shall not look to WAHA for any support therefor other than non-potable water, unless otherwise expressly provided.

3.080 LEGAL STATUS OF CONTRACTOR - PERMITS AND LICENCES

3.081 CONTRACTOR warrants that CONTRACTOR is fully qualified and registered to do all things necessary under the CONTRACT and further that CONTRACTOR has obtained all necessary permits and licences required of it by Law in order to perform the WORK. Any costs and expenses made necessary by or on account of this obligation shall be for the sole account of CONTRACTOR. WAHA, however, shall obtain all government authorization required for CONTRACTOR'S access to and egress from the construction site.

3.090 APPLICABLE LAW

3.091 CONTRACTOR agrees that all statutes, laws, rules and regulations and ordinances of the State of Libya concerning the operation of the CONTRACTOR hereunder shall apply to this Agreement. All disputes not

resolved amicably between the Parties shall be submitted by either party to any Libyan Court having competence to decide such dispute.

3.100 TAXES

3.101 *CONTRACTOR, at its own expense, shall pay:*

- A. All stamp taxes imposed on CONTRACTOR by Stamp Duty Law, and all amendments and executory regulations issued pursuant thereto and*
- B. All other taxes imposed by reason of the work or services to be performed by CONTRACTOR hereunder, including, but not limited to, all licenses, fees, income, franchise and personal property taxes; and*
- C. All employment taxes or contributions imposed by law or regulations with respect to, or measured by, the compensation (wage, salary or other) paid to employees of CONTRACTOR for the work or services to be provided under this Agreement, including, but not limited to, taxes or contributions for unemployment compensation insurance, old age benefits, welfare funds, pension and annuities and disability insurance.*

CONTRACTOR shall defend, indemnify and hold WAHA harmless from any liability for any and all such taxes or contributions or interest or penalties for failure to timely pay the same.

3.110 SOCIAL SECURITY LAW OF LIBYA

3.111 *CONTRACTOR shall comply with the Social Security Law of LIBYA and all Regulations pertaining thereto. CONTRACTOR shall pay or cause to be paid, all compensation, social security, unemployment compensation, medical and surgical or hospital benefits which may become due or payable thereunder. Upon WAHA'S request, CONTRACTOR shall furnish WAHA with a photocopy of appropriate certificates obtained from the Secretariat of Social Insurance evidencing CONTRACTOR'S compliance with the Social Security Law in connection with its employees.*

3.120 INSURANCE

3.121 *Commencing not later than ten (10) days' following execution of the Agreement and continuing thereafter until completion of all WORK, CONTRACTOR shall maintain in full force and effect and at its sole expense and cost, the following insurance:*

A. COMPREHENSIVE GENERAL LIABILITY INSURANCE

Comprehensive General Liability, including Contractual Liability Insurance, with bodily injury limits of not less than \$100,000 for one person and \$300,000 for more than one person in one accident, and with property damage limits of not less than \$100,000 for one

accident and \$300,000 aggregate. This insurance will be issued by an insurance company established and doing business in LIBYA.

Policy must be endorsed to cover the indemnity agreement set out in Section 3.230 (Save Harmless) of these CONDITIONS and a copy of such endorsement is to be furnished WAHA.

B. AUTOMOBILE LIABILITY INSURANCE

Automobile Liability Insurance covering all owned, rented and non-owned automotive equipment used by CONTRACTOR in connection with the WORK, with bodily injury limits of not less than \$100,000 for one person and \$300,000 for more than one person in one accident and with property damage limits of not less than \$100,000 for any one accident. This insurance will be issued by an insurance company established and doing business in LIBYA.

C. In all instances where CONTRACTOR is a Libyan organized company or establishment, the figures LD 20,000 and LD 40,000 shall be substituted, respectively, for the figures of \$100,000 and \$300,000 appearing in Paragraphs A and B of this Section.

3.122 Prior to the commencement of any WORK pursuant to this Agreement, CONTRACTOR shall furnish WAHA with:

A. Certificates of insurance signed by an authorized representative of the insurance company and containing a statement that the said insurance will not be materially changed or cancelled without thirty (30) days' prior written notice to the insurance specialist of WAHA. The insurance coverages to be provided shall be written on policy forms and by insurance companies approved by WAHA and, if requested to do so by WAHA, CONTRACTOR shall promptly furnish certified or photo copies of its insurance policies. Every policy of insurance required under this Article (including insurance to be furnished by CONTRACTOR'S sub-contractors) shall contain an endorsement waiving the insurers' right of subrogation against WAHA, its affiliated and parent companies including, but not limited to the National Oil Corporation and the Directors, Officers, Employees and Agents of each.

B. A true copy of the endorsement covering liabilities assumed by CONTRACTOR under Section 3.230 (Save Harmless) of these CONDITIONS (see also Section 3.121B above).

3.123 No payment will be due from WAHA to CONTRACTOR until certificates of insurance provided for hereinabove are delivered to WAHA.

3.124 CONTRACTOR shall require each sub-contractor employed by CONTRACTOR to carry and pay for insurance in amounts deemed necessary by CONTRACTOR to cover the WORK of the particular sub-

contractor. When required by WAHA, CONTRACTOR shall furnish or cause to be furnished to WAHA, certificates of insurance or certified or photocopies of insurance policies for each sub-contractor.

3.125 CONTRACTOR'S failure to comply, partially or fully, with any and all of the insurance provisions as stated hereinabove shall in no way act to relieve CONTRACTOR from holding WAHA harmless in compliance with Section 3.230 of these CONDITIONS. CONTRACTOR'S obligations under Section 3.230 being independent of its obligations under this section.

3.130 INSPECTION

3.131 The WORK shall be subject to inspection by WAHA'S inspector(s), who may be other than employees of WAHA.

3.132 Each inspector shall have the right to inspect the WORK or any part thereof at any time and at any stage.

3.133 The inspector shall have the right to suspend construction of any part of the WORK which is not in accordance with the Contract including, without limitation, defects in workmanship or CONTRACTOR-furnished equipment and materials.

3.134 Suspension of construction by an inspector shall not constitute a basis for recourse against WAHA provided that such suspension is founded on CONTRACTOR'S default or on deviation from obligations under the Contract.

3.135 In event of a dispute or disagreement between CONTRACTOR and an inspector, WAHA shall have the right to resolve the same and CONTRACTOR shall accept such decision by WAHA as final.

3.140 CONTRACTOR'S REPRESENTATIVES

3.141 CONTRACTOR'S Senior Representative: So long as the CONTRACT remains in effect CONTRACTOR shall maintain in Tripoli a duly authorized individual herein referred to as CONTRACTOR'S "senior representative" who shall be authorized to act for and bind CONTRACTOR in all matters pertaining to the WORK. All WAHA decisions and instructions concerning the WORK or WAHA'S enquiries related thereto shall be notified to the senior representative who shall promptly comply therewith or respond thereto as the case may be. In the event that the senior representative leaves Tripoli at any time he shall designate a deputy acceptable to WAHA to act for him in his absence, and CONTRACTOR shall vest such deputy with the same authority with which the senior representative is vested.

3.142 CONTRACTOR'S Jobsite Representative: In addition to the foregoing senior representative, CONTRACTOR shall designate another individual hereinafter referred to as CONTRACTOR'S "jobsite representative" who shall remain at the jobsite at all times until termination of the Contract and

who shall have full authority to act for and bind CONTRACTOR with respect to all work thereat. CONTRACTOR'S jobsite representative shall not be relieved or replaced except with WAHA'S prior written approval. CONTRACTOR'S jobsite representative shall maintain appropriate records in the field, shall have ready access to any relevant information concerning the WORK in CONTRACTOR'S possession and, upon request, shall promptly supply the same to WAHA.

3.150 INSUFFICIENT INSTRUCTIONS

3.151 In the event that any part of the WORK shown on any drawing or required in any specification is either insufficiently specified or specified in such a manner as to result in other than first class WORK CONTRACTOR, before proceeding with the WORK, shall notify WAHA of such deficiency together with recommendations to rectify the same.

3.152 If WAHA insists that CONTRACTOR must comply with the design and specification in question, then CONTRACTOR can not be held responsible.

3.160 ALTERATIONS, DELETIONS, OMISSIONS AND ADDITIONAL WORK

3.161 WAHA reserves the right at any time to order alterations in the WORK including, but not limited to modifications therein, omissions and deletions therefrom and additions thereto.

3.162 CONTRACTOR shall not make any alteration in the WORK or furnish or use substitute or extra materials except upon WAHA'S prior authorization therefor to be evidenced by a properly signed WAHA Work/Change Order.

3.163 Unless otherwise expressly provided in the Agreement, WAHA'S Work/Change Orders shall be approved in writing by authorized representatives of both WAHA and CONTRACTOR.

3.164 In case of alterations resulting in additional cost to CONTRACTOR or credit to WAHA, such cost or credit is to be added to or deducted from CONTRACTOR'S compensation as the case may be and shall, if then known, be specified on the WAHA Work/Change Order or if not then determined, shall be negotiated between WAHA and CONTRACTOR and confirmed in writing by both as soon as practicable thereafter.

3.165 Acceptance by CONTRACTOR of a Work/Change Order shall not relieve CONTRACTOR of any responsibility for scheduled completion of the WORK unless expressly so provided therein.

3.166 A copy of the Work/Change Order shall accompany any invoice for alterations and related equipment, materials and supplies.

3.170 INVOICES AND PAYMENTS

3.171 *On or before the tenth day of the month following performance of WORK for which CONTRACTOR is then entitled to payment, CONTRACTOR shall submit invoices therefor in quadruplicate, prepared in accordance with WAHA'S Accounting Department requirements, and specifying thereon all amounts due CONTRACTOR with requisite details concerning location, date and description of the work performed, together with such further substantiation as WAHA may require. Each invoice must contain evidence of payment of stamp taxes levied thereon. Payment shall be made by check posted to CONTRACTOR. CONTRACTOR shall not be entitled to any process or partial payments unless such payments are expressly authorized in the Contract. WAHA reserves the right:*

1. *To question any invoice of CONTRACTOR following presentation thereof; and*
2. *To withhold payment of such portion of any invoice as may be questioned before payment.*

3.180 CLEAN-UP

3.181 *During all stages of construction CONTRACTOR shall keep the jobsite and adjacent areas in a clean and orderly condition. Upon completion of the WORK, CONTRACTOR shall remove all equipment tools, materials and supplies from the jobsite. Rubbish and debris shall be disposed of by CONTRACTOR in a manner approved by WAHA'S chief inspector, and all jobsite and adjacent areas shall be left in a clean and workmanlike condition to the satisfaction of the said inspector.*

3.190 CERTIFICATE OF COMPLETION

3.191 *Upon final completion of the WORK, CONTRACTOR shall submit a Certificate of Completion for approval by WAHA. In said certificate CONTRACTOR shall warrant that the WORK has been completed in accordance with the CONTRACT. CONTRACTOR'S warranties shall run from the date that the said certificate is endorsed by WAHA. Within ten (10) calendar days following receipt of the foregoing certificate, WAHA shall either endorse the same or decline to do so and promptly thereafter shall notify CONTRACTOR of its refusal and the reason therefor.*

3.200 WARRANTY FOR ONE YEAR

3.201 *All CONTRACTOR-furnished equipment and materials incorporated into the WORK and all workmanship performed by CONTRACTOR shall be warranted for a period of one (1) year from the date of WAHA'S endorsement of CONTRACTOR'S Certificate of Completion.*

3.202 *At any time prior to termination of the above-specified period of warranty, WAHA shall have the right to require CONTRACTOR to repair or to replace*

(as WAHA elects and at CONTRACTOR's sole expense) any defective CONTRACTOR-furnished equipment, materials or workmanship.

3.210 SURETY BOND AND BANK GUARANTY

3.211 *Upon request of WAHA, CONTRACTOR shall furnish a surety bond in the full amount of and guaranteeing faithful performance of the CONTRACT. The surety bond shall be written on a form and purchased from a source designated by WAHA.*

3.212 *In the alternative, if WAHA so elects, CONTRACTOR shall furnish a bank guarantee from a bank and in a form acceptable to WAHA, in an amount specified by WAHA but not to exceed the total CONTRACT price.*

3.213 *In the event that WAHA requires CONTRACTOR to furnish either a surety bond or bank guarantee as above provided, WAHA shall reimburse CONTRACTOR for the premium cost thereof.*

3.220 ASSIGNMENT, SUBLETTING AND SUBCONTRACTING OF PRIME CONSTRUCTION

3.221 *CONTRACTOR shall not assign, sublet or subcontract the CONTRACT, or any part of the construction specified in the CONTRACT without the prior written consent of WAHA.*

3.222 *Notwithstanding that CONTRACTOR shall have obtained WAHA'S prior written consent to sublet or subcontract any part of the WORK, CONTRACTOR shall not be relieved of responsibility for proper performance of the part of the WORK so subcontracted.*

3.223 *WAHA shall have the right to assign the Contract but WAHA shall not be relieved of any obligation to CONTRACTOR thereunder unless CONTRACTOR expressly consents to such assignment in writing.*

3.230 CONTRACTOR TO INDEMNIFY AND SAVE WAHA HARMLESS

3.231 *CONTRACTOR shall indemnify and save WAHA harmless from any and all claims, losses, damages, costs and expenses of whatsoever nature (including liability for sickness, bodily injury or death of any employee by whomever employed) which are related to the WORK including, without limitation those attributable to any act or omission of CONTRACTOR, its agents or invitees, or any person employed by CONTRACTOR or by one or more of CONTRACTOR'S sub-contractors, unless such claim, loss, damage, cost or expense is a consequence of the sole negligence of WAHA, its employees or agents, provided, however, that in the case of any claim for loss, damage, cost or expense which is judicially determined to have been caused by the joint negligence of WAHA and CONTRACTOR, whether originally asserted against CONTRACTOR or WAHA or both, WAHA and CONTRACTOR shall share the burden of the damages (and expenses arising there-from) in proportion to the degree of negligence legally*

attributable to each. Pursuant to this obligation, CONTRACTOR shall defend WAHA in any litigation relating to the WORK and shall keep WAHA fully and timely informed as to every development in any such litigation.

3.240 RISK OF LOSS OF THE WORK

3.241 All damage, loss or destruction of the WORK or any part thereof (whether or not finished) from any cause whatsoever shall be at the sole risk and responsibility of CONTRACTOR until WAHA'S acceptance endorsement on CONTRACTOR'S Certificate of Completion.

3.250 CUSTOMS DUTIES

3.251 All customs duties levied on or incident to importation into Libya of CONTRACTOR-furnished materials and equipment to be incorporated into the construction as a permanent part of the facility or to be used by CONTRACTOR in performing the WORK under this CONTRACT shall be at the expense of, and paid directly to Libyan authorities by CONTRACTOR.

3.252 Unless otherwise expressly provided in the CONTRACT, it shall be CONTRACTOR'S responsibility and expense to arrange for and pay all costs incurred in obtaining import authorization for and clearing CONTRACTOR-furnished equipment, materials and supplies through Libyan Customs.

3.260 LOSS, DAMAGE OR DESTRUCTION CAUSED BY CONTRACTOR

3.261 Any loss, damage or destruction of property or facilities owned by, in custody of or subject to WAHA'S control which is caused by or attributable to act or omission of CONTRACTOR shall be the responsibility of CONTRACTOR who shall reimburse WAHA for all reasonable costs incurred by WAHA in repair or replacement thereof.

3.270 INDEPENDENT CONTRACTOR

3.271 It is expressly agreed that CONTRACTOR is an independent contractor and that neither CONTRACTOR nor its employees nor its subcontractors nor their employees are or shall be considered servants, agents, or employees of WAHA.

3.272 WAHA shall have no authority with respect to, and assumes no responsibility whatsoever for either the performance of the supervision of the WORK or the means by which or the manner in which the personnel of CONTRACTOR and its subcontractors perform the same, CONTRACTOR being solely responsible therefor.

3.273 All work performed by CONTRACTOR pursuant to the CONTRACT shall be under the exclusive control of CONTRACTOR and shall be performed by personnel of CONTRACTOR. Such personnel shall at all times be subject to the sole direction of and paid by CONTRACTOR.

3.280 CONTRACTOR DELAYS

- 3.281 *If CONTRACTOR is responsible for a delay in the progress of the WORK, CONTRACTOR shall, upon written notice from and without additional cost to WAHA, work such overtime and utilize such additional equipment and/or personnel as may be necessary to eliminate delay in final completion of the WORK.*
- 3.282 *Should CONTRACTOR fail to perform the WORK at a rate which in the opinion of WAHA will assure completion by the completion date determined by the CONTRACTOR, WAHA may employ its own personnel and/or equipment or that of a third party to assist in completing the WORK. The cost of such assistance shall be computed at the CONTRACT price therefor if specified in the CONTRACT, otherwise at WAHA'S cost and shall be deducted from the total CONTRACT price. If the cost to WAHA for such assistance exceeds the total amount accruing to CONTRACTOR when added to other payments due or to become due to CONTRACTOR the difference shall be paid by CONTRACTOR to WAHA.*

3.290 WAHA TAKEOVER RIGHTS

- 3.291 *Any omission, default, or failure by CONTRACTOR to comply with any provision of the CONTRACT which, in the sole judgement of WAHA, constitutes a substantial omission, failure or default shall entitle WAHA, without prejudice to its recourse to any other right or remedy, to notify CONTRACTOR by three (3) days' notice in writing to discontinue the WORK or any part thereof. Following expiration of the aforesaid three (3) days' notice period, WAHA shall have the right to embark upon and to complete the WORK or such part thereof as WAHA may deem expedient, at the sole expense of CONTRACTOR as hereinafter provided.*
- 3.292 *In case of such discontinuance, CONTRACTOR shall not be entitled to receive any further payments due or to become due to CONTRACTOR for work performed until all of the WORK is completed. In the event that the expense of completing the WORK shall exceed the amount which would otherwise have been payable had the WORK been completed by CONTRACTOR, CONTRACTOR shall pay the amount of such difference to WAHA. In the event that such expense is less than the amount which would have been payable to CONTRACTOR had the work been completed by CONTRACTOR in accordance with the CONTRACT, CONTRACTOR shall be entitled to such difference provided that all expenses, claims and damages shall have been settled to WAHA'S satisfaction.*
- 3.293 *In computing the cost of completion in case WAHA proceeds under the terms of sub-section 3.292 above, WAHA personnel costs and overhead allocable to the WORK involved shall be given full weight and consideration.*
- 3.294 *Without limitation of alternative action, WAHA is expressly authorized to assert its rights under any surety bond or bank guaranty, provided pursuant to the CONTRACT, for the purpose of this Section 3.293.*

3.300 CANCELLATION (FASKH) OF CONTRACT IN EVENT OF DEFAULT

3.301 Unless otherwise specifically provided, either party shall have the right at any time to rescind this Agreement for any omission, default or failure by the other party which amounts to a material breach thereof, provided that written notice reciting therein the reason for such rescission is given to the other party.

3.302 It is expressly agreed that in the event a party exercises the foregoing right of cancellation, the said party may cancel the CONTRACT without the necessity of fulfilling any judicial formality with respect thereto including, specifically:

service of formal notice as provided in the Civil Code of Libya including Articles 159 and 160 thereof or obtaining a Court Order ratifying or decreeing cancellation of the CONTRACT

Provided, however, that nothing herein contained shall relieve a party of the duty to give the other party written notice of cancellation as specified in subsection 3.341 above.

3.303 If WAHA exercises the right herein granted to cancel the CONTRACT, it is expressly agreed that WAHA shall be authorized to assert its rights under any surety bond or bank guaranty provided pursuant to the CONTRACT for the purpose of this Section 3.300.

3.310 CONFLICT OF INTERESTS - WARRANTY

3.311 CONTRACTOR warrants that it is not aware of any conflict of interest situation with respect to the CONTRACT, except as expressly set out in writing personally delivered to WAHA prior to the date of the Agreement.

3.320 FORCE MAJEURE

3.321 If either party to this Agreement is unable to comply with the terms hereof by reason of force majeure, namely, any cause or event not reasonably within the control of either party hereto, then such party shall be excused from complying with this Agreement. The party relying on force majeure for suspending performance hereunder shall give to the other party immediate actual notice, and as soon thereafter as possible shall give formal written notice specifying in detail the force majeure relied upon, and the effective date of suspension without prejudice to the text of Clause 2.3. Either party shall have the right to terminate this Agreement with immediate effect, immediately upon serving or receiving notice of force majeure.

3.322 If the force majeure contingencies continue for more than 180 days both parties to the agreement will consult upon the possible further implementation of the agreement. If the further implementation is enforceable and impossible, then both parties will arrange for the termination of the agreement without prejudice to both parties rights and obligations which

have fallen due before the force majeure events . Nevertheless, both parties can extend the said wait period.

3.330 SHUTDOWN DUE TO STRIKE OR LABOR DISPUTE

3.331 WAHA shall not be liable to CONTRACTOR for any cost or expense suffered by CONTRACTOR as a result of suspension of the WORK due to strike, boycott, picketing, labor dispute, or similar or related circumstances.

3.340 CONTRACT NOT EXCLUSIVE

3.341 WAHA reserves the right to employ other persons and contractors for similar or other work and CONTRACTOR shall afford all reasonable opportunities to such other persons and contractors for discharging their respective responsibilities.

3.350 WAIVER OR DELAY IN EXERCISING RIGHTS BY WAHA

3.351 The waiver by WAHA of a breach of default by CONTRACTOR of any provision of this CONTRACT shall not be construed as a waiver by WAHA of any succeeding breach of the same or other provisions, nor shall any delay or failure on the part of WAHA to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any such breach or default.

3.360 CONTRACT IS ENTIRE UNDERSTANDING

3.361 The CONTRACT as defined in Section 3.005 hereof embodies the entire agreement between the parties. Neither party shall assert that it had any understanding inconsistent with or which goes beyond or falls short of any provision contained in the CONTRACT. No change in the terms of the CONTRACT shall be effective as to either party hereto unless agreed to in writing by both parties.

3.370 PERSONS BOUND

3.371 The CONTRACT shall be binding upon and shall insure to the benefit of WAHA and CONTRACTOR and the respective successors, assigns and personal representatives, if any, of each, subject however to the conditions upon assignment, subletting and subcontracting by CONTRACTOR stated in Section 3.270 hereof.

3.380 CAPTIONS OF ARTICLES

3.381 The captions of the respective sections of these CONDITIONS are inserted solely for the purpose of convenience and shall not be construed to confine, limit or describe the scope of the CONTRACT or the intent of any provision thereof.

3.390 NOTICES

- 3.391 *Unless otherwise specifically so provided, all notices required or permitted under the CONTRACT shall be in writing and may be delivered personally, or may be sent by fax, telex or mail to the address of the party to be notified set forth in the Agreement. If sent by fax or telex, a confirmation copy of such fax or telex notice shall be sent by mail to the said party.*
- 3.392 *Nothing herein contained shall justify or excuse a party's failure to give oral notice for the purpose of informing the other party when prompt notification is appropriate, but such oral notice shall not satisfy any requirement of written notice stated in the CONTRACT.*