

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS  
FOR

# CITY OF PORT ARANSAS

## SANDCASTLE DRIVE BEACH SHOWERS



OWNER: CITY OF PORT ARANSAS  
710 West Avenue A  
Port Aransas, Texas 78373

Job No. 6100.C1.02  
JUNE 2021



2725 SWANTNER  
CORPUS CHRISTI, TEXAS 78404

Firm No. 145  
TBPLS Firm No.: 10032400



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## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1A - BID DOCUMENTS

#### 1A1<sup>[2]</sup> INVITATION TO BID

Sealed Proposals addressed to City of Port Aransas will be received at the office of the City of Port Aransas, 710 W. Ave A, Port Aransas, Texas 78373 until Thursday, July 8, @ 4 P.M., at which time they will be publicly opened and read.

Proposals will be for constructing the City of Port Aransas – Sandcastle Drive Beach Shower

The project consists of: Construction of Beach Shower/Changing Facility as shown in the plans titled Sand Castle Beach Showers.

Bidders must submit a Cashier's or Certified Check issued by a bank satisfactory to City of Port Aransas, ~~or a Proposal Bond from a reliable surety company~~, payable to City of Port Aransas in an amount not less than five percent (5%) of the bid submitted as a guaranty that the Bidder will enter into a contract using the forms provided within ten (10) days after notice of award of contract to him. Bids without the required check ~~or proposal bond~~ will not be considered. The City of Port Aransas will notify the successful Bidder, in writing, within thirty (30) days after the date of opening bids, of its acceptance of his proposal.

~~The successful Bidder will be required to furnish a Performance Bond and a Payment Bond each in the amount of contract, written by a responsible surety company authorized to do business in the State of Texas, listed in the latest issue of U. S. Treasury Circular 570 and satisfactory to the Owner, as required by Article 5160, V.A.T.C.S., as amended by H.B. 344, passed by the 56th Legislature, Regular Session, 1959.~~

The Contract Documents contain detailed Instructions to Bidders; however, the Contractors attention is directed to the following items:

1. The Bidder is hereby notified that the Owner has ascertained the Wage Rates, which prevail in the locality in which this work is to be done. The Contractor and Subcontractors shall pay not less than the Wage Rates so shown for each craft or type of "laborer", "workman" or "mechanic" employed on this project.

The Owner reserves the right to reject any or all bids and to waive formalities. In case of ambiguity or lack of clearness in stating the prices in the bids, the Owner reserves the right to consider the most advantageous construction thereof, or to reject the bid. Unreasonable (or "unbalanced") unit prices will authorize the Owner to reject the bid.

Bidders are expected to inspect the site of the work and to inform themselves regarding all local conditions.

Copies of the Contract Documents, which include drawings, general requirements, and technical specifications, may be obtained by a non-refundable fee of \$50.00 with Urban Engineering, 2725 Swantner, Corpus Christi, Texas 78404. PDF format copies of the 11"x17" plans and specifications are also available from Urban Engineering. Copies of Contract Documents will be on file for inspection at the office of the Engineer, 2725 Swantner, Corpus Christi; Texas, the City of Port Aransas; and the A.G.C. office in Corpus Christi.



## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1A - BID DOCUMENTS

#### 1A2<sup>[2]</sup> INSTRUCTIONS TO BIDDERS

##### 1A2.1 USE OF SEPARATE BID FORMS AND CERTIFICATES:

These Contract Documents include a complete set of bidding and contract forms, which are for the convenience of bidders and are not, to be detached from the Contract Documents, filled out, or executed. Separate copies of Bid Forms are furnished for that purpose.

##### 1A2.2 INSPECTION OF SITE:

Each Bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor, and should fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The Bidder should thoroughly examine and familiarize himself with the Drawings, Technical Specifications, and all other Contract Documents. The Contractor by the execution of the Contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the conditions there existing and the Owner will be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.

##### 1A2.3 INTERPRETATIONS OR ADDENDA:

No oral interpretation will be made to any Bidder as to the meaning of the Contract Documents or any part thereof. Every request for such an interpretation shall be made in writing to the Engineer. Any inquiry received seven or more days prior to the date fixed for opening of Bids will be given consideration. Every interpretation made to a Bidder will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the office of the Engineer at least five days before Bids are opened. In addition, all Addenda will be mailed to each person holding Contract Documents, but it shall be the Bidder's responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract and all bidders shall be bound by such Addenda, whether or not received by the Bidders. A pre-bid conference may be held if requested by a sufficient number of prospective bidders.

##### 1A2.4 ALTERNATE BIDS: There shall be no alternate bids allowed.

##### 1A2.5 BIDS:

###### 1A2.5.1 General:

All bids must be submitted on forms supplied by the Engineer and shall be subject to all requirements of the Contract Documents including the Drawings, and these Instructions to Bidders. All Bids must be regular in every respect and no interlineations, excisions or special conditions shall be made or included in the Bid Form by the Bidder.

###### 1A2.5.2 Bid Package:

The following items shall be submitted in the Bid Package:

- a. Bid Proposal
- b. Bid Guaranty

The above listed items shall be enclosed in envelopes, outer and inner, both of which shall be sealed and clearly labeled with the words, "Bid for the Construction of City of Port Aransas – Sandcastle Drive Beach Showers, name of Bidder and date and time of bid opening in order to guard against premature opening of the Bid. The Owner may consider as Irregular any Bid on which there is an alternate or departure from the Bid Form hereto attached, and at its option may reject the same.

**1A2.6 BID GUARANTY:**

**1A2.6.1 General:**

The Bid must be accompanied by a Bid guaranty that shall not be less than five percent (5%) of the amount of the Bid. At the option of the Bidder, guaranty may be a certified check, bank draft, negotiable U. S. Government Bonds (at par value) or a Bid Bond in the form attached. The Bid Bond shall be secured by a guaranty or a surety company listed in the latest issue of U. S. Treasury Circular 570. The amount of such Bid Bond shall be within the maximum amount specified for such company in said Circular 570. No Bid will be considered unless it is accompanied by the required guaranty. Certified check or bank draft must be made payable to the order of the City of Port Aransas. Cash deposits will not be accepted. The Bid guaranty shall insure the execution of the Agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents. Certified check or bank drafts, or the amounts thereof, Bid Bonds, and negotiable U.S. Government Bonds of unsuccessful Bidders will be returned as soon as practical after the opening of the Bids.

**1A2.6.2 Revised Bids:**

Revised Bids submitted before the opening of Bids, whether forwarded by mail or Faxed, if representing an increase in excess of 2 percent of the original Bid, must have the Bid guaranty adjusted accordingly, otherwise the Bid will not be considered.

**1A2.7 CORRECTIONS:**

Erasures or other changes in the Bids must be explained or noted over the signature of the Bidder.

**1A2.8 TIME FOR RECEIVING BIDS:**

Bids received prior to the advertised hour of opening will be securely kept, sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no Bid received thereafter will be considered; except that when a Bid arrives by mail after the time fixed for opening, but before the reading of all other Bids is completed, and it shown to the satisfaction of the Owner that the non-arrival on time was due solely to delay in the mails for which the Bidder was not responsible, such Bid will be received and considered. Bidders are cautioned that, while Faxed modifications of bids may be received as provided above, such modifications, if not explicit and if in any sense subject to misinterpretation, shall make the Bid so modified or amended, subject to rejection.

**1A2.9 OPENING OF BIDS:**

At the time and place fixed for the opening of Bids, the Owner will cause to be opened and publicly read aloud every Bid received within the time set for receiving Bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.

**1A2.10** WITHDRAWAL OF BIDS:

A Bid may be withdrawn on written or Faxed request dispatched by the Bidder in time for delivery in the normal course of business to the time fixed for opening provided; that written confirmation of any Faxed withdrawal over the signature of the Bidder is placed in the mail and postmarked prior to the time set for Bid opening. The Bid guaranty of any Bidder withdrawing his Bid in accordance with the foregoing conditions will be returned promptly.

**1A2.11** REJECTION OF BIDS:

The Owner reserves the right to consider as unqualified to do the work of general construction any Bidder who does not habitually perform with his own forces the major portions of the work involved in construction of the Improvements embraced in this project.

**1A2.12** AWARD:

The Contract will be awarded to the responsible Bidder submitting the lowest and/or best bid complying with the Contract Documents. The Owner reserves the right to accept or reject any or all bids if it is deemed to be in the best interest of the Owner. Further the Owner reserves the right to reject any bid because of irregularity or to waive such irregularity or such action as in the Owner's interest.

**1A2.13** EXECUTION OF AGREEMENT:

**1A2.13.1** General:

Subsequent to the award and within ten days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the Owner an Agreement in the form included in the Contract Documents in such number of copies as the Owner may require.

**1A2.13.2** Bonds:

~~Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Bidder shall, within the period specified in Paragraph 1A2.13.1 above, furnish surety bonds in a penal sum not less than the amount of the contract and for the payment of all persons, firms or corporations to whom the contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including the work. Such bonds shall be in the same form as that included in the Contract Documents and shall bear the same date as, or a date subsequent to that of the Agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bonds. These bonds shall be signed by a guaranty or surety company listed in the latest issue of the U. S. Treasury Circular 570 and the penal sum be within the maximum specified for such company in said Circular 570.~~

**1A2.13.3** Default:

The failure of the successful Bidder to execute such Agreement within ten days after the prescribed forms are presented for signature, or within such extended period as the Owner may grant, based upon reasons determined sufficient by the Owner shall constitute a default, and the Owner may either award the Contract to the next lowest responsible Bidder or re-advertise for Bids, and may charge against the Bidder the difference between the amount of the Bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the Bid Bond. If a more favorable Bid is received by re-advertising, the defaulting Bidder shall have no claim against the Owner for a refund.

**1A2.14** STATEMENT OF BIDDER'S QUALIFICATIONS:

Each Bidder shall, upon request of the Owner submit for that purpose a statement of the Bidder's qualifications, his experience record in constructing the type of improvements in this project, and his organization and equipment available for the work contemplated; and when specifically requested by the Owner, a detailed financial statement. The Owner shall have the

right to take such steps as he deems necessary to determine the ability of the Bidder to perform his obligations under the Contract and the Bidder shall furnish the Owner such information and data for this purpose as it may request. The right is reserved to reject any bid where the investigation of the available evidence or information does not satisfy the Owner that the Bidder is qualified to carry out properly the terms of the Contract.

**1A2.15** WAGE RATES:

The Contractor must abide by the Wage and Hour Laws of the State of Texas, and must pay not less than the legally prescribed rate for Nueces County.

**1A2.16** UNIT PRICES:

The unit prices for each of the several items in the proposal of each Bidder shall include its pro-rata share of overhead and profit so the sum of the products obtained by multiplying the quantity shown for each item by the unit price Bid represents the total Bid. Any Bid not conforming to this requirement maybe rejected as informal. The special attention of all bidders is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five percent (25%) except for work not covered in the Drawings and Technical Specifications as provided for Changes in the Work (Extra Work) provisions of the General Conditions.

**1A2.17** RETAINAGE:

See Subsection 1E8 Measurement and Payment of the Special Conditions.

**1A2.18** GUARANTEE:

See Article 7.17 of the General Conditions and SC-7.10 of the Supplemental General Conditions.

**1A2.19** ACCELERATED IMPLEMENTATION OF DATE OF GUARANTEE:

See Article SC-7.11 of the Supplemental General Conditions.

**1A2.20** LACK OF INFORMATION:

See Article SC-3.5 of the Supplemental General Conditions.

**1A2.21** STATE SALES TAX:

See Subsection 1E9 – State Sales Tax

**DIVISION 1 - GENERAL REQUIREMENTS**

**SECTION 1A - BID DOCUMENTS**

**1A4<sup>[2]</sup> PROPOSAL FOR LUMP SUM PRICE BID**

TO: City of Port Aransas  
710 W. Ave. A  
Port Aransas, Texas 78373

Date: \_\_\_\_\_

**PROPOSAL FOR THE CONSTRUCTION OF  
CITY OF PORT ARANSAS  
SANDCASTLE DRIVE - BEACH SHOWERS**

**GENTLEMEN:**

We, the undersigned, having familiarized itself with local conditions affecting the cost of the work with all requirements of Contract Documents as prepared by the Engineers, and all Addenda to said Documents, hereby proposes to furnish all things as required by said Documents and addenda thereto for the construction of said improvements for the unit prices for work in place for the items as set out hereinafter.

**1A4.1 BASE BID SUMMARY**

To supply all labor and materials to construct the Beach Shower/Changing facility project in accordance with the plans and specifications for the City of Port Aransas - Sandcastle Drive Beach Showers

**TOTAL BASE BID** \$ \_\_\_\_\_

**1A4.2 REJECTIONS OF BIDS**

We, the undersigned, understand that the Owner reserves the right to reject any or all Bids and to waive any informality in the bidding.

**1A4.3 SITE INVESTIGATIONS**

We, the undersigned, have investigated the site conditions, fully satisfied ourselves of both the surface and subsurface conditions there, and based our bid accordingly.

**1A4.4 TIME OF COMPLETION**

We, the undersigned, will commence work within 10 calendar days after the date of the written notice to proceed with construction and to substantially complete the entire project within 35 Calendar Days. Should we fail to comply with this requirement, we agree to pay liquidated damages in the amount of \$200 per Calendar day until the work is completed.

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

(Seal if Corporation)

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

\_\_\_\_\_  
Address

**1A4.5 ADDENDUM RECEIPT**

Receipt of the following addenda to the Contract Documents is acknowledged:

| ADDENDA NO. | DATE RECEIVED | SIGNED | ADDENDA NO. | DATE RECEIVED | SIGNED |
|-------------|---------------|--------|-------------|---------------|--------|
| _____       | _____         | _____  | _____       | _____         | _____  |
| _____       | _____         | _____  | _____       | _____         | _____  |

**1A4.6 BID ACCEPTANCE**

If written notice of the acceptance of this Bid is mailed, Faxed, or delivered to the Bidder within thirty (30) days after the date for opening of Bids or anytime thereafter before this Bid is withdrawn, the Bidder will, within ten (10) days after the date of such mailing, Faxing, of delivery of such notice, execute and deliver to the Owner, an Agreement in the form included in the Contract Documents and surety bonds in accordance with Section 1A2 of the Instructions to Bidders. The Bidder hereby designates as his office to which such notice of acceptance may be mailed, Faxed, or delivered:

**1A4.7 INFORMATION CONCERNING BIDDER**

Name of Bidder: \_\_\_\_\_

Bidder Is: Individual ( ) Partnership ( ) Corporation ( )

Residence of Bidder (if individual): \_\_\_\_\_

Date of Bid: \_\_\_\_\_

If Bidder is a partnership, fill in the following blanks:

Name of Partners: \_\_\_\_\_

If Bidder is a corporation, fill in the following blanks

Organized under the laws of the State of \_\_\_\_\_

Name and Home address of the President \_\_\_\_\_

Name and Address of the Treasurer \_\_\_\_\_

## **DIVISION 1 - GENERAL REQUIREMENTS**

### **SECTION 1A - BID DOCUMENTS**

#### **1A6<sup>[1]</sup> STATEMENT OF BIDDER'S QUALIFICATIONS**

(To be submitted by the lowest and/or best Bidder  
only upon the specific request of the Owner.)

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder.
2. Permanent main office address.
3. When organized.
4. If a corporation, where incorporated.
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand. (Attach a schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
7. General character of work performed by your company.
8. Have you ever failed to complete any work awarded to you? If so, where and why?
9. Have you ever defaulted on a contract? If so, where and why?
10. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed.
11. List your major equipment available for this contract.
12. Experience on construction work similar in importance to this project.
13. Background and experience of the principal members of your organization, including the officers.

14. Credit available:

15. Give Bank reference:

16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?

17. The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
(Name of Bidder)

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

Title: \_\_\_\_\_

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, deposes and says that he  
is \_\_\_\_\_ of \_\_\_\_\_  
(Name of Organization)

and that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires \_\_\_\_\_, 202\_\_.

**DIVISION 1 - GENERAL REQUIREMENTS**

**SECTION 1B - AGREEMENT**

**1B2<sup>[1]</sup> AGREEMENT**

STATE OF TEXAS

COUNTY OF NUECES

THIS AGREEMENT made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between The City of Port Aransas, of the County of Nueces, State of Texas acting through It's City Manager, thereunto duly authorized so to do, Party of the First Part, termed in the Contract Documents as the "OWNER and \_\_\_\_\_ Party of the Second Part, termed in the Contract Documents as the "CONTRACTOR".

WITNESSETH:

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, and under the conditions expressed in the bond bearing even date herewith, the said CONTRACTOR hereby agrees with the said OWNER to commence and complete the construction of certain improvements described as follows:

**CITY OF PORT ARANSAS  
SANDCASTLE DRIVE BEACH SHOWERS**

and all work extra in connection therewith, under the terms as stated in the General Conditions of the Agreement; and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the proposal attached hereto, and in accordance with all the General Provisions and Requirements, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory matter thereof, and the Specifications and Special Provisions therefore, and ~~the Performance Bond and Payment Bond hereto attached;~~ all of which are made a part hereof and collectively evidence and constitute the entire contract.

THE CONTRACTOR hereby agrees to commence work within ten (10) calendar days after the date written notice to do so shall have been given to him, and to substantially complete same within 35 Calendar Days after the date of the written notice to commence work. In defaulting thereof the Contractor shall be liable for liquidated damages as provided for in the Contract Documents.

THE OWNER agrees to pay the Contractors in current funds for the performance of the contract in accordance with the Proposal submitted herefore, subject to additions and deductions, as provided in the General Provisions and Requirements, and to make payments on account thereof as provided therein, and the prices as shown by the Proposal or bid of the Contractor shall be full compensation to be received by said Contractor under the terms of this contract.

IN WITNESS WHEREOF, the parties to these presents have executed this agreement in five (5) parts at Nueces County, Texas, the year and day first above written.

Party of the First Part (OWNER)  
THE CITY OF PORT ARANSAS

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
David Parsons | City Manager

Party of the Second Part (CONTRACTOR)

ATTEST:

\_\_\_\_\_

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

Title: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1C - BONDS

#### 1C5<sup>[1]</sup> INSURANCE REQUIREMENTS AND ACKNOWLEDGMENT

##### 1C5.1 SCHEDULE OF INSURANCE REQUIRED FOR THIS CONTRACT:

- a. Workmen's Compensation: Statutory including Employer's Liability.
- b. Commercial General Liability policy with \$1,000,000 each occurrence, \$2,000,000 annual aggregate limits. Explosion, Collapse & Underground property damage hazards included. Products & Completed Operations Liability, Mobile Equipment Liability, Personal Injury Offenses and Contractual Liability shall be included. The policy will include the Per Project General Aggregate endorsement. This General Liability coverage will be primary and noncontributory to any policies written for the benefit of the Owner and Urban Engineering. Additional Insured and Waiver of Subrogation clauses in favor of the Owner and Urban Engineering.
- c. Automobile Liability policy with a \$1,000,000 Combined Single Limit. This coverage is to include all cars and trucks owned, rented, borrowed, hired or leased, and others of non-ownership nature used by employees. Additional Insured and Waiver of Subrogation clauses in favor of the Owner and Urban Engineering.
- d. Business Umbrella Liability Policy with \$1,000,000 / \$1,000,000 limits. The Umbrella policy will provide coverage over the General Liability, Products Liability, Completed Operations Liability, Automobile Liability and Employers' Liability coverages. The Umbrella Liability policy will be following form to all primary policies' coverages.
- e. Owner's Protective Liability\*: \$1,000,000.00 Aggregate. CONTRACTOR shall purchase and maintain, in force, for the duration of the work naming the OWNER and the OWNER's employees as the named insured and listing URBAN ENGINEERING, Corpus Christi, Texas as Additional Insureds.
- f. Builder's Risk: Adequate to fully cover the insurable portions of the project.

**\* Particular attention is directed to the requirement for Owners Protective Liability Insurance to be furnished by the Contractor that is separate and in addition to the Public Liability Insurance that is also required to be furnished by the Contractor.**

##### 1C5.2 WORKER'S COMPENSATION INSURANCE COVERAGE:

- a. Definitions:

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.906) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- d. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- e. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - (1) A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- g. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' compensation "commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- i. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) Obtain from each other person with whom it contracts, and provide to the contractor:
    - (a) A certificate of coverage, prior to the other person beginning work on the project; and;
    - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) – (7), with the certificates of coverage to be provided to the person for whom they are providing services.
  
- j. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by Workers' Compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
  
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of Notice of Breach from the governmental entity.

**1C5.3 ACKNOWLEDGMENT BY INSURANCE COMPANY REPRESENTATIVE:**

The following acknowledgment is to be executed and included in the contract documents. This acknowledgment is in addition to certificates of insurance to be provided by the contractor to the Engineer and the Owner.

*As the authorized Insurance Agent for the Insurance Company providing insurance coverage for this project, I have read and understand the extent of the insurance coverage required and certify that the policies of insurance listed on the certificate of insurance have been issued to the insured named on the certificate for the policy period indicated. Notwithstanding any requirements, term or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the insurance afforded by the policies described on the certificate are subject to all the terms, exclusions and conditions of such policies. Should any of the policies be cancelled before the expiration date, notice will be delivered in accordance with the policy provisions*

\_\_\_\_\_  
*(Name of Insurance Company)*

By: \_\_\_\_\_  
*(Authorized Insurance Company Representative)*

Title: \_\_\_\_\_

## 1D1.1 STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a

Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and

easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
  1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
  1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
  1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
    - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
  1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating

systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

#### **3.02 *Reference Standards***

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

#### **3.03 *Reporting and Resolving Discrepancies***

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or

interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor’s operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous

Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).

3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to

industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
  - 1. include at least the specific coverages provided in this Article.
  - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. ~~*Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~
  - 1. ~~include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."~~
  - 2. ~~be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.~~
  - 3. ~~cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for~~

- ~~the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.~~
- ~~4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).~~
  - ~~5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).~~
  - ~~6. extend to cover damage or loss to insured property while in transit.~~
  - ~~7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.~~
  - ~~8. allow for the waiver of the insurer's subrogation rights, as set forth below.~~
  - ~~9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.~~
  - ~~10. not include a co-insurance clause.~~
  - ~~11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.~~
  - ~~12. include performance/hot testing and start-up.~~
  - ~~13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.~~
- ~~B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.~~
- ~~C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.~~
- ~~D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.~~
- ~~E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.~~
- ~~F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction~~

~~equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.~~

#### 6.06 *Waiver of Rights*

- ~~A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.~~
- ~~B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:~~
- ~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
  - ~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.~~
- ~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~
- ~~D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.~~

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. ~~Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.~~
- B. ~~Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.~~
- C. ~~If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.~~

### **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

#### 7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

#### 7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and

incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
  - B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
  - C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional

data about the proposed “or-equal” item. Engineer will be the sole judge of acceptability. No “or-equal” item will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an “or-equal”, which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer’s Determination:* Neither approval nor denial of an “or-equal” request shall result in any change in Contract Price. The Engineer’s denial of an “or-equal” request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from that specified, and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.

- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
  - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
  - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
  - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
  - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data

to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
  - a. Contractor shall submit the number of Samples required in the Specifications.
  - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
  1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
  5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings,

calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

## 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

## 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

### **9.05 *Lands and Easements; Reports, Tests, and Drawings***

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### **9.06 *Insurance***

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

### **9.07 *Change Orders***

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the

requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

**ARTICLE 12 – CLAIMS**

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If

the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

### **ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

#### **13.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions,

unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the

deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a

decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

#### **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

##### 14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

##### 14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
  - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;

- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

- I. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the

Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment,

in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate

the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1D - GENERAL CONDITIONS

#### 1D1.2 [1] SUPPLEMENTAL GENERAL CONDITIONS

These Supplemental General Conditions amend or supplement the "Standard General Conditions of the Construction Contract" and other provisions of the Contract Documents. All provisions which are not so amended or supplemented remain in full force and effect.

#### ARTICLE SC-1 DEFINITIONS AND TERMINOLOGY

**ENGINEER** - Whenever the word "ENGINEER" is used in this Contract, it shall be understood as referring to Urban Engineering Consulting Engineers, 2725 Swantner, Corpus Christi, Texas 78404, (361) 854-3101, or their authorized representative.

**Design Specification** - Whenever the term "Design Specification" is used, it shall be understood that the performance of the completed work is as designed by the ENGINEER, and the CONTRACTOR must follow the requirements of the drawings and specifications; follow the manufacturer's recommendations (material and equipment); follow industry standard procedures and provide top quality workmanship.

**Performance Specification** - Whenever the term "Performance Specification" is used, it shall be understood that the performance of the completed work is the responsibility of the CONTRACTOR, provided the OWNER has faithfully followed all written operational and maintenance instructions supplied by the CONTRACTOR. The CONTRACTOR is not relieved of the responsibility for improper performance of the completed work even if there was improper operation and/or maintenance by the OWNER but it obviously was not the cause of improper performance. In a performance specification, the CONTRACTOR is responsible for the design of the item furnished and installed by him. It is intended that the item function properly without excessive operation and maintenance being required by the OWNER. The item furnished must incorporate the features specified but still perform as intended. The materials specified are to set a minimum standard but shall not be considered a design. If the design furnished by the CONTRACTOR requires higher quality material in order to perform as intended, it shall be furnished at no increase in cost to the Contract amount. When minimum dimensions are specified, they shall not be considered a design. If the design furnished by the CONTRACTOR requires larger dimensions in order to perform as intended, it shall be furnished at no increase in cost to the Contract amount.

**Material** - Whenever the word "Material" is used or inferred in this Contract, it shall be understood as referring to material that is new. Both workmanship and material shall be of good quality. The CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials being furnished. Materials described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

**Notice** - All notices permitted or required to be given under the terms of the Contract Documents shall be in writing. Any such notices shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an office of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, return receipt requested, to the address of the receiving party shown on the Agreement, or to such other address as such party may have indicated to the other party in accordance with the terms of this paragraph.

**Contract Documents** - Contract Documents are defined in Article 1 of the General Conditions. Also to be considered as Contract Documents are the "Bidding Documents" (Invitation to Bid, Instructions to Bidders, Proposal Bid Form, Bid Bond, etc.) "Special Conditions" and any other Federal or State requirements listed in the Index.

**Special Conditions** - Whenever the term "Special Conditions" is used, it shall be understood as being those general requirements that are set out in such detail that they apply only to this Contract.

**Standard Specifications** - All references to standard specifications or manufacturer's installation directions shall mean the latest edition thereof. Reference to technical society, organization or body is made in specifications in accordance with the following abbreviations:

|       |   |
|-------|---|
| AASHO | American Association of State Highway Officials |
| ACI   | American Concrete Institute                     |
| ASA   | American Standards Association                  |
| ASTM  | American Society for Testing Materials          |
| AWWA  | American Water Works Association                |
| FS    | Federal Specifications                          |
| PCA   | Portland Cement Association                     |
| AIEE  | American Institute of Electrical Engineers      |
| NEC   | National Electrical Code                        |
| UL    | Underwriter's Laboratories                      |
| AISI  | American Iron and Steel Institute               |
| API   | American Petroleum Institute                    |
| IPCEA | Insulated Power Cable Engineer's Association    |
| NEMA  | National Electrical Manufacturer's Association  |
| AWS   | American Welding Society                        |
| AISC  | American Institute of Steel Construction        |

Some specification items cover construction requirements and materials in a comprehensive manner, and only pertinent portions of these items apply.

**Calendar Day** (as related to contract time of completion as stipulated in the Contract Documents) - A Calendar Day is any day of the calendar, including Saturdays, Sundays and Holidays.

## ARTICLE SC-2 PRELIMINARY MATTERS

### **2.1 Progress Schedule:**

Paragraphs 2.03, 2.05 and 4.04 of the General Conditions requires the preparation and updating of a Progress Schedule. This schedule shall be revised once each month to show actual progress to proposed progress. Three copies of the revised schedule shall be submitted with the Contractor's Monthly Request for Payment. The monthly request for payment will not be approved by the ENGINEER until these copies have been received.

### **2.2 Shop Drawings Schedule:**

See Article SC-7 Contractor's Responsibilities of these Supplemental General Conditions.

### **2.3 Schedule of Values:**

A Cost Breakdown shall be provided as set out in Article SC-15.2 of the Supplemental General Conditions for all lump sum items.

### **2.4 Schedule of Payments:**

The schedule of payments shall list the items in the breakdown of the bid with a column to show the anticipated dollar value completed each month and a column to show the actual dollar value completed each month. The schedule shall show total anticipated monthly payments and the accumulative percent complete (based on dollar value) as well as actual total monthly payment and the accumulative percent complete. ***This schedule of payments shall be revised once each month to show actual payment to estimated payment.*** The estimated payments shall be updated each month to show the anticipated payment for the following month. Failure of the CONTRACTOR to diligently prepare this schedule of payments may cause his monthly payment to be delayed.

## ARTICLE SC-3 CONTRACT DOCUMENTS

### **3.1 General:**

The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

**3.2 Conflicts and Partial Omissions:**

A conflict occurs only when specific instructions that conflict are given. Example: Drawings show concrete sidewalk to have 6 x 6 - #6 x #6 wire mesh reinforcing but specifications call for 6 x 6 - #10 x #10 wire mesh reinforcing. This conflict would be resolved by invoking the priority of Contract Documents as set out below (drawings take priority over specifications). In the case of dimensions, figured dimensions take precedent over scaled dimensions. A partial omission occurs when information is shown only in one section of the Contract Documents. Example: Drawings do not show waterstop in construction joints but technical specifications do require them. The waterstop must be provided at no increase in Contract price because a requirement in any Contract Document is binding.

**3.3 Priority of Interpretation:**

In the event of a conflict between the various Contract Documents, the priority of interpretation shall be in the following order: Signed Agreement, Federal or State Requirements (if any), Addenda, Drawings, Special Conditions, Invitation for Bids, Instructions to Bidders, Supplemental General Conditions, General Conditions, Technical Specifications, Proposal, Notice to Bidders and Bonds.

**3.4 Errors and Omissions:**

The CONTRACTOR shall carefully check these specifications and the Contract Drawings, and report to the ENGINEER any errors or omissions discovered, whereupon full instructions will be furnished promptly by the ENGINEER. If errors or omissions are so discovered and reported before the work to which they pertain is constructed, and if correction of such errors or omissions causes an increase in Contractor's cost, CONTRACTOR shall be compensated for such increase in cost as provided elsewhere. CONTRACTOR shall bear the expense of correcting any errors and omissions on the drawings or specifications, which are not discovered or reported by the CONTRACTOR prior to construction and which, in the opinion of the ENGINEER, could have been discovered by reasonable diligence on the part of the CONTRACTOR.

It is the intent of this Contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate Contract Documents, the priority of interpretation defined above shall govern. Further, it is the intent of the Contract Documents that the CONTRACTOR shall perform all work to complete the project ready for its intended use. The CONTRACTOR will not be allowed extra payment when a literal interpretation of any portion of the Contract Documents would conflict with the obvious intent of the Contract Documents. Example: The Plan View of a building indicates 17 doors but the door schedule indicates 16 doors; the CONTRACTOR will provide 17 doors without being allowed extra payment. The ENGINEER shall be permitted to make such corrections or interpretations as may be deemed necessary for the fulfillment of the intent of the Contract Documents.

In the event the CONTRACTOR discovers an apparent error or discrepancy, he shall immediately call this to the attention of the ENGINEER. The CONTRACTOR shall not take advantage of any apparent error or omission in the Contract Documents to obtain additional compensation.

**3.5 Lack of Information:**

If the CONTRACTOR feels that there is insufficient information in order for him to prepare his bid and/or construct the work, he is required to make a written request for additional information. The CONTRACTOR shall not use the lack of information as a basis for requesting extra compensation.

**ARTICLE SC-4 COMMENCEMENT AND PROGRESS OF THE WORK**

No Supplemental Provisions This Contract

ARTICLE SC-5 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL CONDITIONS REFERENCE POINTS

**5.1 *Lands for Work:***

OWNER provided, as indicated on the drawings, land upon which work is to be done right-of-way for access to it, and such other lands, which are designated for use of CONTRACTOR. CONTRACTOR provides at his expense and without liability of OWNER any additional land and access thereto that may be required for his construction operations, temporary construction facilities, or for storage materials.

**5.2 *Subsurface Conditions:***

Technical Data: See Section 2B14 - Geotechnical Investigation, if included.

**5.3 *Contractor's Buildings:***

The building of structures for housing men, or the erection of tents or other forms of protection, will be permitted only at such places as the ENGINEER shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the ENGINEER. Also see Section 1E15 Field Office of the Special Conditions, if included.

**5.4 *Sanitation:***

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from the public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the ENGINEER, and their use shall be strictly enforced.

**5.5 *Utility Services for Construction:***

If temporary utility services, including water, are required, contract with utility company concerned. CONTRACTOR to furnish all temporary utility services and water at his expense.

**5.6 *Underground Utilities:***

The drawings show as much information as can be reasonably obtained by an engineering survey party and from City and utility company records regarding the location and nature of pipelines, storm sewers, water lines, sanitary sewer, telephone conduits, etc. However, the accuracy of or completeness of such information is not guaranteed. It shall be the Contractor's responsibility to locate such underground features sufficiently in advance of operation to preclude damage to same. In the event of damage to underground facilities whether shown or not in the drawings, the CONTRACTOR shall make the necessary repairs to place the facilities back in service at no increase in the Contract price and all such repairs shall conform to the requirements of the company or agency servicing the facility.

**5.7 *Deviations Occasioned by Utility Structures:***

Whenever existing utilities present obstructions to grades and alignment of structures immediately notify ENGINEER who, without delay, will determine whether existing improvements are to be relocated. Where necessary to move services, poles, guy wires, pipelines or other obstructions, make arrangements with owners of utilities. OWNER will not be liable for damages on account of delays due to changes made by owners of privately owned utilities which hinder progress of work.

**5.8 *Existing Obstructions:***

No obstructions are known to exist within the limits of the project. However, the ENGINEER does not in any way warrant that the CONTRACTOR may not find obstructions. The CONTRACTOR shall be responsible for removing and disposing of any obstructions found in the project areas.

**5.9 *Fences and Other Obstructions:***

Where necessary to take down fences, signs or other obstructions, replace facilities in their original condition, regardless if on public or private property.

## ARTICLE SC-6 BONDS AND INSURANCE

### **6.1 Bonds:**

See Subsection 1A2 "Instructions To Bidders" for the bonds that are required for this project.

### **6.2 Insurance:**

See Subsection 1C5 "Insurance Requirements and Acknowledgment" for a schedule of Insurance coverage required for this project.

## ARTICLE SC-7 CONTRACTOR'S RESPONSIBILITIES

### **7.1 Shop Drawings:**

Shop drawings are submittal information that the CONTRACTOR is required to furnish to the ENGINEER. Shop drawings include but are not limited to the following:

- A. Fabrication drawings
- B. Setting drawings
- C. Manufacturer's design drawings
- D. Manufacturer's detailed specifications
- E. Schedules and cut sheets

#### *7.1.1 Items on Which Shop Drawings are Required:*

The CONTRACTOR shall furnish to the ENGINEER, for approval, within 10 days of the date of the "Notice to Proceed with Construction" (Work Order), a complete list of all items on which shop drawings will be prepared.

#### *7.1.2 Preparation of Shop Drawings:*

Shop drawings shall be prepared in such a form and detail that full compliance with the Contract Documents and the best practices of the industry are clearly demonstrated. All shop drawings involving equipment of any nature shall include a full and complete parts list, the current street address and current phone number of the nearest authorized dealer, the current street address and current phone number of the nearest authorized repair facility, and a full and complete list of recommended spare parts. The CONTRACTOR shall include with each and every shop drawing submitted a signed statement that the submittal has been reviewed by the CONTRACTOR and is in full compliance with the Contract Documents. In the event there are minor deviations from the Contract Documents, the CONTRACTOR shall itemize each and every deviation and state in writing why the deviation is required and exactly how the submitted equipment or material will be equal to or better than that required by the Contract Documents. Shop Drawings received without the required statement and/or without a complete list of deviations shall be rejected and a resubmittal will be required.

#### *7.1.3 Payment for Preparation of Shop Drawings:*

The CONTRACTOR shall receive no direct payment for the preparation of shop drawings; that cost is considered subsidiary to the appropriate bid item.

#### *7.1.4 Submission of Shop Drawings:*

The CONTRACTOR shall submit to the ENGINEER, with such promptness as to cause no delay in his own work or in that of any other Contractor, six copies of all shop drawings required, and the ENGINEER shall pass upon them with reasonable promptness. If ENGINEER rejects drawings, resubmit corrected drawings until drawings are acceptable to ENGINEER. Such procedure shall not be considered cause for delay. Obtain approval prior to purchase or fabrication.

#### *7.1.5 Responsibility for Shop Drawings:*

Review by the ENGINEER shall not constitute acceptance by the ENGINEER of any responsibility for the accuracy, coordination and completeness of the shop drawings or the items of equipment or material represented in the submission. Accuracy, coordination and completeness of shop drawings shall be the sole responsibility of the CONTRACTOR, including full responsibility to conform with any of the Engineer's review comments, corrections, modifications or notes and to fully conform with the Contract Documents. In all cases, the CONTRACTOR and the CONTRACTOR alone is responsible for the correctness of dimensions.

**7.1.6 Charges for Resubmittal of Shop Drawings:**

The CONTRACTOR shall submit complete and acceptable shop drawings at least by the first resubmittal. The OWNER shall therefore withhold from payments due the CONTRACTOR to cover the additional costs of the ENGINEER'S review beyond the first resubmittal. Any reviews beyond the first resubmittal will be done at the ENGINEER'S CONVENIENCE and at the ENGINEER'S standard billing rates.

**7.2 Reporting Errors and Omissions:**

See Paragraph SC-3.4 of these Supplemental General Conditions.

**7.3 Alternate Designs:**

If alternate design features are proposed for convenience of CONTRACTOR, submit design calculations and detailed drawings covering proposed changes and related modifications of contract drawings to ENGINEER for approval. Make drawings same size as contract drawings and of comparable quality. Make payment of charges resulting from modifications including engineering charges for checking such designs.

**7.4 Variations Due to Equipment:**

Foundations, structural supports, electrical work and piping shown on drawings for items of equipment may be changed if necessary to accommodate equipment furnished. Every effort has been made to design foundations, structural supports, electrical work and piping so that no changes will be necessary; however, exact dimensions and size of subject foundations and structural supports and exact electrical and piping installation cannot be finally determined until various items of equipment are purchased and manufacturer's certified shop drawings are secured. Make required changes, with prior approval of ENGINEER, at no cost to OWNER. If substitute items of equipment are authorized which vary materially from those shown on the drawings, prepare and submit equipment data and detailed drawings covering necessary modifications to ENGINEER for approval. Make drawings same size as contract drawings and of comparable quality. Make payment of charges resulting from substitution, including engineering charges for checking modifications.

**7.5 Certifications:**

The CONTRACTOR shall have the manufacturer or supplier of all materials used in the construction of this project certify that the particular material being furnished conforms to the requirements of these specifications.

**7.5.1 Certification Form:**

A sample certification form for reinforced concrete pipe is as follows:

"I, \_\_\_\_\_, representing \_\_\_\_\_, do hereby certify that the concrete pipe being furnished for the \_\_\_\_\_ conforms to the ASTM Specification C-76, for Class III, Wall B, reinforced concrete culvert pipe.

Signed \_\_\_\_\_  
Title \_\_\_\_\_

Certifications for other material shall be similar as to form and content. The furnishing of this certificate does not prevent the ENGINEER from rejecting at the project site any material that has been damaged or that does not, in the opinion of the ENGINEER, meet the requirements of these specifications.

**7.6 Protection of Property and Facilities:**

**7.6.1 Protection of Adjoining Property:**

The said CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and, he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The CONTRACTOR agrees to indemnify, save and hold harmless the OWNER against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the Contract; but, any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

**7.6.2 Public Utilities and Private Property:**

The CONTRACTOR shall protect all buildings and other property, which may be endangered during progress of the work and leave same in as good condition as when found. Where sewer mains, water mains, sewer services, water services, gas mains, gas services, telephone or electrical conduits, poles and facilities of other public utilities are encountered, give protection in all cases. Where excavation is made below existing utilities, substantially support with wood blocks, beams or other means as directed, any pipe, conduit, or other units so that same may be left in good working condition with no damage of after settlement. The CONTRACTOR shall replace or repair damaged property at no cost to the OWNER. No valve, switch or other control on existing utility systems shall be operated for any purposes by the CONTRACTOR without approval of the ENGINEER and the utility. Exercise care in performing work so as not to interrupt service. Locate and uncover existing utilities ahead of heavy excavation equipment. If utility service must be interrupted, all consumers affected by such operations shall be notified by the CONTRACTOR as directed by the ENGINEER and/or utility before the operation and advised of the probable time when service will be restored.

**7.6.3 Protection of Trees, Plants and Shrubs:**

Except when shown otherwise on the drawings, all existing trees, plants and shrubs shall be protected from damage during construction operations. Substantially constructed guards, barricades or other protective measures shall be provided as required to protect against moving equipment. CONTRACTOR shall replace at his own expense any trees, plants and shrubs which, in the opinion of the ENGINEER, are damaged or destroyed due to carelessness. Trees, plants and shrubs that fall within the limits of street, sidewalk or driveway excavation shall be removed by the CONTRACTOR. If the abutting property owner requests it, the CONTRACTOR shall remove them in a manner suitable for replanting and carefully deposit them on the landowner's property (large trees are excepted); otherwise, they shall become the property of the CONTRACTOR. Unless shown otherwise on the drawings, trees, plants and shrubs that fall within the limits of pipe trench excavation shall be removed and replanted by the CONTRACTOR in their original position as nearly as possible. As long as the CONTRACTOR uses reasonable diligence in removing and replanting trees, plants and shrubs, he shall not be responsible for their survival.

**7.7 Equipment, Materials and Construction Plant:**

The CONTRACTOR shall be responsible for the care, preservation and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

**7.7.1 Storage of Materials:**

No materials shall be stored nor shall any equipment be parked on adjacent property without the expressed consent of the owner of the property concerned. Watertight storage facilities of suitable size with floors raised above the ground shall be provided for materials liable to damage from exposure to the weather. Other materials shall be stored on blocks off the ground per manufacturer's recommendation or as directed by the ENGINEER. Materials shall be so placed as to permit easy access for inspection and identification. Any material, which has deteriorated, become damaged or is otherwise unfit for use, shall not be used in the work. Upon completion of all work or when directed by the ENGINEER, the CONTRACTOR shall remove the storage facilities from the site.

**7.7.2 Material and Equipment:**

Incorporate into work only new materials and equipment, unless otherwise designated. Store these materials and equipment in such manner to protect them from damage. Manner of protection subject to specific approval of ENGINEER. Pipe, fittings, equipment and other serviceable materials found on site of work, or dismantled by reason of construction, remain property of OWNER. Remove and deliver materials to OWNER at designated points. Pay for usable materials that are damaged through negligence at prevailing market price.

**7.8 Detours:**

The CONTRACTOR shall provide barricades, signs, lights, guards and any other items required to maintain properly marked detours around his operation.

**7.9 Inconvenience to the Public:**

It is the declared and acknowledged intent of these specifications that all work such as backfilling of excavations, repairs to roads and driveways, and cleanup work or other such operations shall follow as closely as practical to the laying and constructing operation in such manner that the public is not unnecessarily inconvenienced, nor a hazard to public safety created. The ENGINEER shall be entitled notify the CONTRACTOR if his force and/or equipment are insufficient to such a degree that the public is unnecessarily inconvenienced and/or a hazard to the public safety is created. The CONTRACTOR, upon such notification by the ENGINEER, shall make the necessary changes to his force and/or equipment, or the ENGINEER may stop the work in order to insure the proper execution of the work and to avoid inconveniences to the public or avoid safety hazards as herein noted.

**7.10 Guarantee:**

All work, including equipment, shall be warranted to be free from defects due to faulty workmanship or materials for a period of one (1) year from date of issue of a Certificate of Substantial Completion by the ENGINEER. This guarantee does not include maintenance. This guarantee does not include normal wear. (If, during the one-year period, OWNER transfers title to the work and/or equipment, it is understood that the guarantee will inure to the benefit of the new owner.) Upon notice from OWNER, his agent or assigns, repair defects in all construction, which develop during specific period at no cost to OWNER or his assigns. Neither final acceptance nor final payment nor any provision in Contract Documents relieves CONTRACTOR of above guarantee. Notice of observed defects upon notice entitles OWNER or his assigns to repair or replace it and recover reasonable cost therefrom from CONTRACTOR and/or his surety. This guarantee does not include damage due to improper operation and maintenance by the OWNER, provided the CONTRACTOR provides the following:

- 7.10.1 The CONTRACTOR furnish the OWNER with written operational and maintenance instructions on all items.
- 7.10.2 During the warranty period the CONTRACTOR make periodic (at least once every 60 days) trips to the project site and inspect the items for proper operation and maintenance.
- 7.10.3 After each inspection trip, the CONTRACTOR shall submit his findings in writing to the OWNER and the ENGINEER.

Failure to fulfill any one or all of these conditions will make the CONTRACTOR liable for repairing damage (at no cost to the OWNER) to items under warranty, even if in his opinion it was due to improper operation and/or maintenance by the OWNER.

**7.11 Accelerated Implementation of Date of Guarantee:**

Upon written request to the OWNER, certain items of equipment will be considered for beginning their warranty period prior to the date of Certificate of Substantial Completion. To be considered, the following conditions must be present:

- 7.11.1 Item must be in full, continuous and satisfactory operation for at least 30 days before beginning warranty period.
- 7.11.2 Placing the item into full service must be acceptable to the OWNER.
- 7.11.3 Like items will be considered as a group. Example: If a lift station contains 4 pumps, all 4 pumps must be in place and operating in a fully automatic mode before beginning the warranty period can be considered.

If the OWNER does allow the CONTRACTOR to begin the warranty period on certain items prior to the issuance of the CERTIFICATE OF SUBSTANTIAL COMPLETION, that in no way affects the Guarantee on the remainder of the work.

#### ARTICLE SC-8 OTHER WORK AT THE SITE

No Supplemental Provisions This Contract

#### ARTICLE SC-9 OWNER'S RESPONSIBILITIES

No Supplemental Provisions This Contract

#### ARTICLE SC-10 ENGINEER'S STATUS DURING CONSTRUCTION

##### **10.1 *Changes and Alterations:***

The ENGINEER shall be entitled to make such changes and alterations as the ENGINEER may see fit in the line, location, grade, form, dimensions, scope of the work, plans or material for the work herein contemplated, or any part thereof either before or after the beginning of this construction, without affecting the validity of this Contract and the accompanying Performance and Payment Bonds. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under the Measurement and Payment provisions. If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this Contract, except as provided for unit price items under the Measurement and Payment provisions; otherwise, such additional work shall be paid for as provided under Article 11 of the General Conditions. In case the ENGINEER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the CONTRACTOR shall be compensated for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

##### **10.2 *Right of ENGINEER to Modify Methods and Equipment:***

If at any time the working force of the CONTRACTOR is inadequate for securing the progress herein specified, the CONTRACTOR shall, if so ordered in writing, increase his force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

##### **10.3 *Jobsite Safety:***

Neither the ENGINEER'S activities, nor the presence of ENGINEER or its employees and sub-consultants at a construction site, shall relieve the CONTRACTOR of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. ENGINEER and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The CONTRACTOR shall be solely responsible for jobsite safety.

#### ARTICLE SC-11 AMENDING THE CONTRACT DOCUMENTS - CHANGES IN THE WORK

No Supplemental Provisions This Contract

#### ARTICLE SC-12 CLAIMS

No Supplemental Provisions This Contract

#### ARTICLE SC-13 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

No Supplemental Provisions This Contract

ARTICLE SC-14 TESTS & INSPECTIONS; CORRECTION; REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

No Supplemental Provisions This Contract

ARTICLE SC-15 PAYMENTS TO CONTRACTOR: SET-OFFS; AND COMPLETION; CORRECTION PERIOD

**15.1 Measurement:**

*15.1.1 Estimated Quantities for Lump Sum Bid Items:*

The Contract Documents are intended to show clearly all work to be done and materials to be furnished hereunder. It is also the intent of the Contract Documents that the project be complete and ready for use and that the lump sum price bid include any incidental or miscellaneous items needed for the proper operation of the completed project whether specifically called for or not.

*15.1.2 Estimated Quantities for Unit Price Contracts:*

The Contract Documents are intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ somewhat from these estimates. Payment shall be for the actual amount of such work done and the material furnished. The CONTRACTOR agrees that he will make no claim for damages, anticipated profits, or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and the estimated quantities contemplated and contained in the proposal; provided, however, should the net monetary value of all additive and subtractive changes in quantities of such items of work (i.e., difference in cost) increase or decrease the original contract price by more than twenty-five percent (25%) will entitle the CONTRACTOR to revised consideration. Any revised consideration is to be determined by agreement between the parties. It is also the intent of the Contract Documents that the quantities not be increased outside the limits of the work as bid without the mutual consent of CONTRACTOR and the OWNER.

**15.2 Payments on Lump Sum Bid Items:**

The CONTRACTOR shall prepare and furnish to the ENGINEER for approval, a "Cost Breakdown" (Schedule of Values) for all work to be accomplished on lump sum bid items. This "Cost Breakdown" shall be used for determining the value of work accomplished each month by the CONTRACTOR so that partial payments may be made. This "Cost Breakdown" shall be prepared in such a manner and in sufficient detail to allow the ENGINEER to certify the value of work completed and to recommend payment be made to the CONTRACTOR.

The ENGINEER shall be the sole judge as to the suitability of the "Cost Breakdown" furnished for the above stated purpose. The Engineer will not allow an "unbalanced cost breakdown". This "Cost Breakdown" will be used for establishing prices for Extra Work only if the prices are agreeable to both the CONTRACTOR and the OWNER.

**15.3 Payments on Unit Price Contracts:**

Payment shall be made on the basis of actual measured and/or computed length, area, solid contents, number and weight, unless otherwise specifically provided, and no extra measurements and measurements customary in the trade shall be used as a basis for payment hereunder.

**15.4 Failure to Complete on Time:**

The Time of Completion is the essence of the Contract. For each Calendar Day that any work shall remain incomplete after the time specified in the Proposal and Contract, or as automatically increased by additional work ordered after the Contract is signed, the Damages in the amount of \$ 200.00 Per Calendar Day will be deducted from the moneys due the CONTRACTOR, as liquidated damages. The moneys thus deducted for such delay, failure or non-completion is not to be considered as a penalty but shall be deemed, taken and

treated as reasonable liquidated damages since it would be impractical and most difficult to fix the actual damages. Contractor shall not be charged with liquidated damages when the delay in completion of the work is due to any preference, priority or allocation order duly issued by the Owner or to unforeseen causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather (such as abnormal rainfall, tornadoes and hurricanes). The Contractor is required to promptly give written notice of such delays to the Engineer.

ARTICLE SC-16 SUSPENSION OF WORK AND TERMINATION

No Supplemental Provisions This Contract

ARTICLE SC-17 – FINAL RESOLUTION OF DISPUTES

No Supplemental Provisions This Contract

ARTICLE SC-18 MISCELLANEOUS

No Supplemental Provisions This Contract



DIVISION 1 - GENERAL REQUIREMENTS

SECTION 1E - SPECIAL CONDITIONS

**1E1[2] NAME AND LOCATION OF PROJECT**

1E1.1 NAME OF PROJECT: City of Port Aransas Sandcastle Drive Beach Showers.

1E1.2 LOCATION OF PROJECT: This project is located on the north side when you reach the beach via Sandcastle Drive.

**1E2 OWNER**

1E2.1 NAME: The City of Port Aransas

**1E3 CONTRACT DRAWINGS**

SHEET

NO.

TITLE

- 1 Title Sheet
- 2 Site Map-Utility Plan
- 3 Details
- 4 Details 2

**1E4 COMPLETION DATE**

1E4.1 GENERAL:

The work is to be substantially complete within 35 **Calendar Days** from the date construction is begun. Calculation of time shall begin from the date construction is begun but in any case no later than 10 days after notice to proceed is received by the Contractor.

**1E5 HORIZONTAL AND VERTICAL CONTROL**

1E5.3 PROPERTY CORNERS:

Horizontal control shall be taken from existing structure and dimensions shown on the plans. It is the Contractor's responsibility to provide and layout the project in accordance with the plans and specifications.

1E5.4 NOTIFICATION:

It is the Contractor's responsibility to provide and layout the project in accordance with the plans and specifications.

**1E6 SCHEDULE AND SEQUENCE OF CONSTRUCTION**

1E6.1 REQUIRED SCHEDULES:

Article SC-2 of the Supplemental General Conditions contains provisions that require that the Contractor prepare a Progress Schedule and Schedule of Payments. Those schedules shall incorporate the schedule and sequence of construction requirements as set out in this section.

1E6.2 SCHEDULE OF CONSTRUCTION:

It is the meaning and intent of this Contract that the Contractor shall be allowed to prosecute his work at such times and seasons in such order or precedence, and in such manner as shall be the most conducive to economy of construction, subject to the following conditions:

- a. The schedule of construction shall be structured to meet all requirements of Section 1E4 Completion Date of the Special Conditions.
- b. The schedule of construction shall not conflict with any provision of the Contract Documents and also that when the Owner is having other work done, either by contract or by their own force, the Engineer may direct the time and manner of constructing the work done under this Contract so that conflict will be avoided and the construction of various works being done for the Owner will be harmonized.

#### **1E7 LABORATORY TESTING**

1E7.1 LABORATORY TESTING: - TESTING WILL NOT BE REQUIRED

#### **1E8 MEASUREMENT AND PAYMENT**

1E8.1 MEASUREMENT:

This item shall include all work required to construct the improvements, such as new waterline and tie-in, pavement repair, dewatering if necessary, grading of site, new shower structure and all work to complete the work as outlined in the plans and specifications.

## **DIVISION 1 - GENERAL REQUIREMENTS**

### **SECTION 1E - SPECIAL CONDITIONS**

#### **1E9<sup>[1]</sup> STATE SALES TAX**

##### **1E9.1 GENERAL:**

The Contractor's attention is directed to the State of Texas Comptroller of Public Accounts Limited Sales, Excise and Use Tax Rules and Regulations. Upon compliance with certain conditions, these rules provide for exemption from this tax of materials for use in work done for an exempt agency under a contract. The Owner of this project is an exempt agency. Any bidder may elect to exclude this sales tax from his bid. If the bidder submitting the lowest acceptable bid for performing the work on this project elects to comply with the above mentioned rules on any bid item included in this Contract he shall obtain any necessary permit or permits from the State Comptroller allowing the purchase of material for use in this project without having to pay the limited sales, excise and use tax at the time of purchase. The Owner will furnish the Contractor with its exemption certificate for those materials used in the project. The Owner will make no further allowance for and will make no price adjustment above or below the originally bid unit prices on account of this tax.



**DIVISION 1 - GENERAL REQUIREMENTS**

**SECTION 1E - SPECIAL CONDITIONS**

**1E10<sup>[1]</sup> WAGE RATES**

1E10.1 GENERAL: The following wage decision shall apply for the construction of this project:



## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1E - SPECIAL CONDITIONS

#### 1E11<sup>[1]</sup> INSPECTION BY CITY

##### 1E11.1 GENERAL:

The Public work will be subject to inspection and checked by the City Engineers and Inspectors. Should, however, at any time the City Inspectors, on visiting the job, feel that any work is being improperly done by the Contractor and not in accordance with these specifications and they desire corrections, clarifications, or reasons for the deviation, they shall have the right to proceed as follows:

##### 1E11.1.1 Notification:

Notify the on-the-job representative of Urban Engineering, Consulting Engineers for the Owner, of all conditions complained of and of the corrective conditions desired to be made. Every effort will be made to reach an agreement with the City Inspectors, but if such cannot be arrived at, then the City Inspectors shall have the right to order the representative of Urban Engineering to temporarily delay construction until such time as Urban Engineering can work out a satisfactory agreement with the Director of Public Works or the City Engineer for the Contractor to proceed.

##### 1E11.1.2 Delay:

If for any reason the conditions as outlined above occur and for any reason a representative of Urban Engineering cannot be reached immediately then, and only then, shall the City Inspectors have the right to temporarily delay construction until they can contact Urban Engineering at their office so that satisfactory adjustment can be made between them and the City for the work to proceed.

##### 1E11.1.3 Negotiations:

All major disagreements, if any, must be adjusted by Urban Engineering, it being understood that except in cases as outlined above all negotiations of the Contractor with the City or with the City Inspectors or vice-versa will be handled through Urban Engineering, and only they shall have the right to issue instructions to the Contractor.



## DIVISION 1 - GENERAL REQUIREMENTS

### SECTION 1E - SPECIAL CONDITIONS

#### 1E19<sup>[1]</sup> EXISTING OBSTRUCTIONS

##### 1E19.1 GENERAL:

The drawings show the locations of all known surface and subsurface structures. In the case of underground obstructions such as existing water, sewer, storm sewer, gas or electrical lines that are not shown on the drawings, their location is not guaranteed. The Owner assumes no responsibility for failure to show any or all these structures on the drawings or to show them in their exact location. Failure to show will not be considered sufficient basis for claims for additional compensation for extra work in any manner whatsoever unless the obstruction encountered is such as to necessitate substantial changes in the lines or grades or requires the building of special work for which no provision is made in the drawings and which is not essentially subsidiary to some item of work for which provision is made. It is assumed, that as elsewhere provided, the Contractor has thoroughly inspected the site, is informed as to the correct location of surface structures, and has included the cost of such incidental work in the price bid, and has considered and allowed for all foreseeable incidental work due to variable sub-surface conditions, whether such conditions and such work are fully and properly described on the drawings or not. Minor changes and variations of the work specified and shown on the drawings shall be expected by the Contractor and allowed for as incidental to the satisfactory completion of a whole and functioning work or improvement.

##### 1E19.2 TRENCHING AHEAD:

###### 1E19.2.1 General:

The Contractor is required to conduct trenching operations in a manner which will allow conflicts to be anticipated thereby allowing measures to be taken in certain cases to circumvent the conflict. Specifically the Contractor shall do the following:

- a. Trenching shall be performed a minimum of 20 feet (or the total length of the trench) ahead of pipe laying operations. Pilot Trenches may be used at the Contractor's option.
- b. If un-shown buried lines or destructions are discovered which may cause conflict, Contractor shall stop pipe-laying operations and notify Engineer of discovery.

###### 1E19.2.2 Grade Alignment of Pipes in Pressure Service:

If a conflict can be avoided by adjusting grades by a maximum of six inches up or down and no additional fittings are required, no claim for additional compensation for extra work will be considered.

###### 1E19.2.3 Avoidable Conflicts:

Conflicts occurring because of the Contractor's failure to comply with 1E19.2.1 and which could have been avoided by grade adjustment in accordance with 1E19.2.2 will not be considered for extra compensation.

##### 1E19.3 EXTRA WORK:

No work for which extra compensation is to be received shall be performed until approved by the Engineer and the Owner.



## DIVISION 1 – GENERAL REQUIREMENTS

### SECTION 1E – SPECIAL CONDITIONS

#### 1E20<sup>[5]</sup> STORM WATER POLLUTION PREVENTION

##### 1E20.1 SCOPE:

This specification shall govern for all work under the contract related to storm water pollution prevention. This specification is a performance specification as defined in Section 1D General Conditions, Subsection "Supplemental General Conditions", Art. SC-1 Definitions.

##### 1E20.2 REQUIREMENTS:

###### 1E20.2.1 General:

The intent of storm water management is to improve water quality by reducing the pollutants in storm water discharges from the site. Storm water means storm water runoff, surface runoff and drainage from the construction site. The Contractor must implement the Best Management Practices (BMP) for the construction activities as outlined in the Storm Water Pollution Prevention Plan (SWP3). Attached to and a part of this specification is the following item:

- c. Storm Water Pollution Prevention Plan (SWP3)

###### 1E20.2.2 Storm Water Pollution Prevention Plan (SWP3):

###### a. General:

A SWP3 has been prepared for this project and is included with this specification. The SWP3 identifies potential sources of pollution that may be expected to affect the quality of storm water discharges from the construction site and includes a site description, erosion and sediment controls, storm water management, other controls, maintenance procedures and inspection procedures. The Contractor shall implement, maintain and inspect the control techniques required by the SWP3.

###### b. Inspection and Maintenance:

Inspection and maintenance is required for all areas disturbed by construction activity and for all erosion and sediment controls that are used. Inspection shall be performed at least once a week, and within 24 hours of a storm event of 0.5 inches or greater for as long as a portion of the site is disturbed. The Contractor should select one individual who will be responsible for the inspection and maintenance of the system. The inspector will look at the control measures and determine if they are performing correctly and effectively. A report form is provided in the SWP3 for the inspector to use. Additional information and requirements are detailed in Section 1E20.3.5 - Maintenance/Inspection Procedures of the SWP3.

###### c. Storm Water Pollution Prevention Plan:

The SWP3 is included on the following pages. After award of the project, copies of the document will be bound in the executed contract documents. Two copies of the contract documents that contain the SWP3 will be provided to the Contractor and one copy must be kept at the site of the construction activities at all times.

##### 1E20.3 STORM WATER POLLUTION PREVENTION PLAN:

###### 1E20.3.1 Project Description:

###### a. General

The project consists of construction of Beach Shower/Changing Facility as shown in the plans titled Sand Castle Beach Showers.

###### b. Project Location:

This project is located on the north side when you reach the beach via Sandcastle Drive.

###### c. Owner: City of Port Aransas

###### d. Construction Contractor: \_\_\_\_\_

e. Name of Receiving Waters: Corpus Christi Bay

f. Site Map: N/A

**1E20.3.2** Best Management Practices (BMP)

a. Erosion Controls:

The existing vegetation must be preserved to the greatest extent possible. The areas disturbed by construction will be seeded to provide stabilization and prevent erosion. The stabilization measures shall be implemented as soon as practicable in portions of the site where construction activities have ceased. Stabilization practices must be implemented no later than 14 days after the construction activities in any portion of the site have ceased. The above timing for stabilization practices does not apply to the following; areas where construction activity will resume in the area within 21 days, or in arid, semi arid or drought stricken areas. In these areas the stabilization measures will take place as soon as practicable. Other erosion control measures which may be implemented include:

- Temporary Vegetation
- Blankets/Matting
- Mulch
- Sod
- Interceptor Swale
- Diversion Dike
- Erosion Control Compost
- Mulch Filter Berms and Socks
- Compost Filter Berms and Socks

b. Sedimentation Controls:

Sedimentation controls will be implemented to retain sediment onsite and minimize offsite transport to the extent practicable. Silt fence will be installed on the slopes to prevent sediment from entering the un-named tributaries of the Nueces River and the Choke Canyon Reservoir during construction. Sediment must be removed no later than the time that the capacity of the control is reduced by 50%. If sediment escapes from the site the accumulations must be removed at a frequency so as to minimize further negative effects and whenever feasible prior to the next rain. Other sedimentation controls which may also be used include:

- Sand Bag Berm
- Rock Berm
- Brush Berms
- Mulch Filter Berms and Socks
- Compost Filter Berms and Socks
- Silt Fence
- Hay Bale Dike
- Triangular Filter Dike
- Stone Outlet Sediment Traps
- Sediment Basins

- Erosion Control Compost

c. Post-Construction TSS Control:

A sod filter strip will be placed along the toe of slope of the disturbed areas in the vicinity of the unnamed tributaries of the Nueces River and Choke Canyon Reservoir to reduce the total suspended solids load in the storm water runoff. Other post-construction TSS control measures which may be implemented include:

- Retention/Irrigation
- Constructed Wetlands
- Extended Detention Basin
- Wet Basins
- Vegetative Filter Strips
- Vegetation Lined Drainage Ditches
- Grassy Swales
- Sand Filter Systems
- Erosion Control Compost
- Mulch Filter Berms and Socks
- Compost Filter Berms and Socks

**1E20.3.3** Other Controls:

a. Waste Disposal:

(1) Waste Materials:

All waste materials will be collected and stored in a securely lidded metal Dumpster rented from a reputable disposal company licensed for solid waste disposal. The Dumpster will meet all local, State and Federal solid waste management regulations. All trash and construction debris from the site will be disposed in the Dumpster. The Dumpster will be emptied as necessary and the trash hauled to a permitted waste disposal site. No construction waste materials will be buried on site. All personnel will be instructed regarding the correct procedure for waste disposal. The Pollution Prevention Plan will be posted in the office trailer and the Construction Superintendent will be responsible for seeing that these procedures are followed.

(2) Hazardous Waste:

All hazardous waste materials will be disposed of in the manner as required by City, State or Federal regulations or by the materials manufacturer. All personnel will be instructed regarding the correct procedure for handling hazardous waste and the Construction Superintendent will be responsible for seeing that these procedures are followed.

(3) Sanitary Waste:

All sanitary waste will be collected from portable units as necessary and/or required by governing regulations. Collection will be by a licensed or permitted Disposal Company and the waste properly disposed of.

b. Offsite Vehicle Tracking:

Stabilized construction entrances will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept daily to remove any excess mud, dirt or rock tracked from the site.

c. Sprinkling for Dust Control

The Contractor shall provide water as needed to sprinkle areas in order to control and minimize the generation of dust.

**1E20.3.4** Demonstration of Compliance with Federal, State and Local Regulations:

This plan follows the outline provided to meet the requirements of State regulations concerning storm water management.

**1E20.3.5** Maintenance/Inspection Procedures:

a. General:

All erosion, sedimentation, post-construction TSS and other protective measures identified in the SWP3 must be maintained in effective operating condition. If during the regular inspections the permittee notes that the measures are not performing as intended then maintenance must be performed before the next storm event. Any measure that has been rendered ineffective due to construction activity must be replaced or corrected immediately.

b. Maintenance and Inspection Practices for Erosion, Sedimentation and Post-Construction TSS Controls:

These are the maintenance and inspection practices that will be used to maintain erosion and sedimentation and post-construction TSS controls.

- (1) Where possible, the site work will be performed in phases leaving certain areas undisturbed as the work progresses.
- (2) All control measures will be inspected at least once each week and within 24 hours of any storm event of 0.5 inches or greater.
- (3) All measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.
- (4) Built up sediment will be removed from silt fence when it has reached one-third the height of the fence.
- (5) Silt fence will be inspected for depth of sediment, tears, to see if the fabric is securely attached to the fence posts, and to see that the fence posts are firmly in the ground.
- (6) Earthen dikes, sediment traps and check dams will be inspected to verify they are functioning as originally constructed.
- (7) Temporary and permanent seeding, planting, mulching, sod stabilization and sod filter strips will be inspected for bare spots, washouts and healthy growth.
- (8) A maintenance inspection report will be made after each inspection. A copy of the report form to be completed by the inspector is shown at the end of this section.
- (9) The Construction Superintendent will select one individual who will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.
- (10) Personnel selected for inspection and maintenance responsibilities will receive training from the Construction Superintendent. They will be trained in all the inspection and maintenance practices necessary for keeping the erosion and sediment controls used on site in good working order.
- (11) Inspection report with certification for compliance should be retained for at least three years.

**1E20.3.6** Inventory For Pollution Prevention Plan:

The materials or substances listed below are expected to be present onsite during construction:

- a. Lumber
- b. PVC pipe
- c. Ductile iron Pipe Fittings
- d. Concrete materials and reinforcing steel
- e. Polyethylene pipe and products
- f. Petroleum and asphalt products
- g. Paint
- h. Fertilizer
- i. Herbicides

**1E20.3.7** Management Practice To Prevent Spills:

a. General Material Management Practices:

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to storm water runoff. The following good housekeeping practices will be followed onsite during the construction project.

- (1) An effort will be made to store only enough product required to do the job.
- (2) All materials stored onsite will be stored in a neat, orderly manner in their appropriate containers and, if possible, under a roof or other enclosure.
- (3) Products will be kept in their original containers with the original manufacturer's label.
- (4) Substances will not be mixed with one another unless recommended by the manufacturer.
- (5) Whenever possible, all of a product will be used up before disposing of the container.
- (6) Manufacturers' recommendations for proper use and disposal will be followed.
- (7) The site superintendent will inspect daily to ensure proper use and disposal of materials onsite.

b. Hazardous Products Management Practices:

These practices are used to reduce the risks associated with hazardous materials.

- (1) Products will be kept in original containers unless they are not resealable.
- (2) Original labels and material safety data will be retained; they contain important product information.
- (3) If surplus product must be disposed of, manufacturers' or local and State recommended methods for proper disposal would be followed.

c. Product Specific Practices

The following product specific practices will be followed onsite.

(1) Petroleum Product:

All onsite vehicles will be monitored for leaks and receive regular preventive maintenance to reduce the chance of leakage. Petroleum products will be stored in tightly sealed containers, which are clearly labeled. Any asphalt substances used onsite will be applied according to the manufacturer's recommendations.

(2) Fertilizers:

Fertilizers used will be applied only in the minimum amounts recommended by the manufacturer. Once applied, fertilizer will be worked in the soil to limit exposure to storm water. Storage will be in a covered shed. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.

(3) Herbicides:

Herbicides used will be applied only in the minimum amounts recommended by the manufacturer. Applications shall be accomplished only at times when wind will not cause over spray. Storage will be in a covered shed. Partially used containers of herbicides will be tightly resealed.

(4) Paints:

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be properly disposed of according to manufacturer's instructions or State and local regulations.

(5) Concrete Trucks:

Concrete trucks will wash out or discharge surplus concrete or drum wash water only in specific areas selected and maintained by the Contractor. The Contractor will remove this waste material at the completion of the project.

**1E20.3.8** Spill Prevention And Cleanup:

In addition to the management practices discussed in the previous sections of this plan, the following practices will be followed for spill prevention and cleanup:

- a. Manufacturers' recommended methods for spill cleanup will be clearly posted and site personnel will be made aware of the procedures and location of the information and cleanup supplies.

- b. Materials and equipment necessary for spill cleanup will be kept in the material storage area onsite. Equipment and materials will include but not be limited to brooms, dust pans, mops, rags, gloves, goggles, kitty litter, sand, sawdust, and plastic and metal trash containers specifically for this purpose.
- c. All spills will be cleaned up immediately after discovery.
- d. The spill area will be kept well ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.
- e. Spills of toxic or hazardous material will be reported to the appropriate State or local government agency, regardless of the size.
- f. The spill prevention plan will be adjusted to include measures to prevent this type of spill from reoccurring and how to clean up the spill if there is another one. A description of the spill, what caused it, and the cleanup measures will also be included.
- g. The Construction Superintendent responsible for the day-to-day site operations will be the spill prevention and cleanup coordinator. He will designate at least one other site personnel who will receive spill prevention and cleanup training; this individual will become responsible for a particular phase of prevention and cleanup. The names of responsible spill personnel will be posted in the material storage area and in the office trailer onsite.

**STORM WATER POLLUTION PREVENTION PLAN  
INSPECTION AND MAINTENANCE REPORT**

1.) LOCATION OF BMP'S THAT NEED TO BE MAINTAINED:

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2.) LOCATION OF BMP'S THAT FAILED TO OPERATE AS DESIGNED:

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3.) LOCATIONS WHERE ADDITIONAL BMP'S ARE NEEDED:

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4.) CHANGES REQUIRED TO THE POLLUTION PREVENTION PLAN:

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5.) REASONS FOR CHANGES:

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INSPECTORS SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



**STORM WATER POLLUTION PREVENTION PLAN**

**INSPECTION AND MAINTENANCE REPORT**

**STRUCTURAL CONTROLS**

DATE: \_\_\_\_\_

INSPECTORS INITIALS: \_\_\_\_\_

SILT FENCE:

| IS THE BOTTOM OF THE FABRIC STILL BURIED? | IS THE FABRIC TORN OR SAGGING? | ARE THE POSTS TIPPED OVER? | HOW DEEP IS THE SEDIMENT? |
|---|--------------------------------|----------------------------|---------------------------|
|   |                                |                            |                           |

**MAINTENANCE REQUIRED FOR SILT FENCE:**

**TO BE PERFORMED BY:** \_\_\_\_\_

**ON OR BEFORE:** \_\_\_\_\_

Note: Inspections and reports to be performed at least once each week and following any storm event of ½ inch or greater.





**SMALL CONSTRUCTION SITE NOTICE:  
LOW POTENTIAL FOR EROSION  
FOR THE  
Texas Commission on Environmental Quality (TCEQ)  
Stormwater Program  
TPDES GENERAL PERMIT TXR150000**

The following information is posted in compliance with **Part II.E.1.** of the TCEQ General Permit Number TXR150000 for discharges of stormwater runoff from small construction sites automatically authorized based on low rainfall erosivity. Additional information regarding the TCEQ stormwater permit program may be found on the internet at:

<https://www.tceq.texas.gov/permitting/stormwater/construction>

|  |  |
|--|--|
| Operator Name:   |  |
| Contact Name and Phone Number:   |  |
| Project Description:<br><br>(Physical address or description of the site's location, estimated start date and projected end date, or date that disturbed soils will be stabilized) |  |

For Small Construction Sites Authorized Under Part II.E.1., the following certification must be completed:

I \_\_\_\_\_ (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an automatic authorization based on low rainfall erosivity under Part II.E.1. of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. Construction activities at this site shall occur within a time period listed in Appendix A of the TPDES general permit for this county, that period beginning on \_\_\_\_\_ and ending on \_\_\_\_\_. I understand that if construction activities continue past this period, all stormwater runoff must be authorized under a separate provision of the general permit. A copy of this signed notice is supplied to the operator of the MS4 if discharges enter an MS4. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature and Title \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ *Date Notice Removed*  
\_\_\_\_\_ *MS4 operator notified per Part II.F.3.*



## DIVISION 2 - SITE WORK

### SECTION 2H - ROADS AND WALKS

#### **2H17<sup>[6]</sup> REMOVING AND REPLACING PAVEMENTS, CURB AND GUTTER, DRIVEWAYS AND SIDEWALK**

##### **2H17.1** SCOPE:

This specification shall govern for all work necessary to complete the removing and replacing of all types of pavements, curb and gutter, driveways and sidewalks as required to complete the project. This specification is a performance specification as defined in Section 1D General Conditions, Sub-section "Supplemental General Conditions", Art. SC-1 Definitions.

##### **2H17.2** METHOD OF CUTTING:

The outline of the trench shall be marked on the surface to be cut. The cut shall be made as nearly vertical as possible. The excavated pavement or concrete shall be removed from the site and disposed of by the Contractor.

##### **2H17.3** REPLACING PAVEMENT:

###### **2H17.3.1** Concrete Pavement:

Replace with 8-inch thick 2500 p.s.i. concrete slab, reinforced with No. 3 bars on 12-inch centers both ways. Tamp and float to finish flush with surface of pavement cut. Repair to be wider than ditch excavation. Concrete slab and reinforcement to rest on at least 9-inches of undisturbed soil on each side of ditch.

###### **2H17.3.2** Asphalt Pavement:

###### a. Base (Soil-Cement) Course:

Replace with 8-inches of soil (sand) cement base. The intent is to secure a complete course of soil containing a uniform Portland cement mixture, free from loose or segregated areas, of uniform density and moisture content, well bound and compacted for its full depth with a smooth surface suitable for placing an asphalt surface course.

- (1) Portland Cement: Portland cement shall comply with the latest specifications for Portland cement (ASTM C150, Type 1, CSA Standard A5, or AASHTO M85) or blended hydraulic cements (ASTM C595 or AASHTO M240, excluding slag cement Types S and SA) for the type specified.
- (2) Water: Water shall be free from substances deleterious to the hardening of the soil-cement.
- (3) Base Material: Base material shall be soil (sand). Soil material shall consist of the material from the excavation in the area to be paved, or approved borrow material, or a combination of these materials proportioned as directed. The soil shall be free from vegetation or other objectionable material.
- (4) Soil Cement Mixture: Both the base material and Portland cement shall be of such quality that when properly proportioned and mixed, a satisfactory base mixture will be produced. The base material and cement shall be properly proportioned such that the finished base mixture contains 11% Portland cement by weight (to be varied in the field as the situation dictates and as directed by the Engineer).
- (5) Compaction: At the start of compaction, the percentage of moisture in the mixture and in unpulverized soil lumps shall not be below or more than two percentage points above the specified optimum moisture content, and shall be less than that quantity which will cause the soil-cement mixture to become unstable during compaction and finishing. Prior to compaction, the mixture shall be in a loose condition for its full depth. The compactive effort shall be applied to the full depth. The loose mixtures shall then be compacted uniformly to a minimum of 96% Standard Proctor Density in accordance with A.A.S.H.O. Standard Method T-99. Compaction and finishing shall be done in such a manner as to

produce, in not longer than 2 hours, a smooth, dense surface free of compaction planes, cracks, ridges or loose material.

- (6) Curing, Protection and Cover: After the base course has been finished it shall be immediately protected against rapid drying by applying an asphaltic prime coat at the rate of 0.20 gal/per square yard, or as necessary, in the opinion of the Engineer, to completely seal the surface and fill all voids. Immediately prior to application of the asphaltic material, the base course shall be wetted, by the use of water distributors, so that all voids in the soil-cement mixture are filled with water but without free water standing on the surface. The asphaltic material shall be applied while the surface of the soil-cement base is wet so that undue asphaltic penetration will be avoided. It shall be the responsibility of the contractor to protect this asphaltic curing coat against picking up under traffic by sanding the surface. The bituminous curing coat shall remain in place for the proposed additional asphalt surface course.
- (7) Maintenance: The contractor shall be required to maintain at his own expense the entire pavement area within the limits of his contract in good condition satisfactory to the Engineer from the time he first starts work until all work shall have been completed.

b. Prime Coat:

Prime coat shall conform to Item 300 - Asphalt, Oil and Emulsions of the Standard Specification for Construction of Highways, Streets and Bridges, 1982 Ed. - Texas Department of Highways and Public Transportation, for Type MC-70.

c. Asphaltic Concrete:

Hot mix shall conform to Item 340 - Hot Mix Asphaltic Concrete of the Standard Specification for Construction of Highways, Streets and Bridges, 1982 Ed. - Texas Department of Highways and Public Transportation, for Type D. Apply hot mix-hot laid asphaltic concrete at the rate of 165 lb./s.y. compacted to 1-1/2 inch thickness. Repair to be wider than ditch excavation. Soil-cement base shall rest on at least 9-inches of undisturbed soil on each side of the ditch.

**2H17.3.3** Caliche or Shell Streets and Shoulders:

Replace with 8-inches of soil-cement base (sand) compacted to 90% Standard Proctor Density in accordance with A.A.S.H.O. Standard Method T-99. Repair to be larger than ditch excavation. Base shall rest on at least 9 inches of undisturbed soil on each side of ditch.

**2H17.4** REPLACING CONCRETE DRIVEWAYS:

Replace with 2500 p.s.i. concrete, 6" thick, reinforced with 6 x 6 #6-#6 wire mesh . Finish replaced section same as that appearing on old driveway. Use an epoxy bonding agent, in conformance with the manufacturer's recommendations, when bonding new concrete to old concrete.

**2H17.5** REPLACING CONCRETE SIDEWALKS:

Replace with 2500 p.s.i. concrete, 4" thick, reinforced with 6 x 6 #6-#6 wire mesh. Finish replaced section same as that appearing on old sidewalk. Use an epoxy bonding agent, in conformance with the manufacturer's recommendations, when bonding new concrete to old concrete.

**2H17.6** REPLACING CURB AND GUTTER:

Replace with 2500 p.s.i. concrete section conforming in all details to original section including reinforcing.

## DIVISION 6 - CARPENTRY

### SECTION 6A - ROUGH CARPENTRY

#### 6A3<sup>[3]</sup> CARPENTRY FOR SHOWERS

**6A3.1**     SCOPE:

This specification shall govern for all work necessary for providing the materials and labor for construction of showers required to complete the project. This specification is a performance specification as defined in Section 1D General Conditions, Subsection "Supplemental General Conditions", Art. SC-1 Definitions.

**6A3.2**     SUBMITTALS:

**6A3.2.1**    Product Data:

For each type of process and factory-fabricated product.

- a. Include data for wood preservative treatment from chemical treatment manufacturer and certification by treating plant that treated materials comply with requirements.

**6A3.2.2**    Material Certificates:

For dimension lumber specified to comply with minimum allowable unit stresses. Indicate species and grade selected for each use and design values approved by the American Lumber Standards Committee Board of Review.

**6A3.2.3**    Research/Evaluation Reports:

For the following, showing compliance with building code in effect for the project:

- a. Wood-preservative-treated wood.
- b. Power-driven fasteners.
- c. Expansion anchors.
- d. Metal framing anchors.

**6A3.3**     QUALITY ASSURANCE:

**6A3.3.1**    Forest Certification:

For the following wood products, provide materials produced from wood obtained from forests certified by an FSC accredited certification body to comply with FSC 1.2, "Principles and Criteria":

- a. Dimension lumber framing.
- b. Miscellaneous lumber.

**6A3.4**     WOOD PRODUCTS, GENERAL:

**6A3.4.1**    Lumber:

DOC PS 20 and applicable rules of grading agencies indicated. If no grading agency is indicated, provide lumber that complies with the applicable rules of any rules-writing agency certified by the ALSC Board of Review. Provide lumber graded by an agency certified by the ALSC Board of Review to inspect and grade lumber under the rules indicated.

- a. Factory mark each piece of lumber with grade stamp of grading agency.
- b. For exposed lumber indicated to receive a stained or natural finish, mark grade stamp on end or back of each piece or omit grade stamp and provide certificates of grade compliance issued by grading agency.
- c. Provide dressed lumber, S4S, unless otherwise indicated.

**6A3.4.2**    Engineered Wood Products:

Provide engineered wood products acceptable to authorities having jurisdiction and for which current model code research or evaluation reports exist that show compliance with building code in effect for project.

- a. Allowable Design Stresses: Provide engineered wood products with allowable design stresses, as published by manufacturer that meet or exceed those indicated. Manufacturer's published values shall be determined from empirical data or by rational engineering analysis and demonstrated by comprehensive testing performed by a qualified independent testing agency.
- 6A3.5**     WOOD-PRESERVED-TREATED LUMBER:
- 6A3.5.1**   Preservative Treatment by Pressure Process:  
AWPA T1 and U1 (C2)
- a. Preservative Chemicals: Acceptable to authorities having jurisdiction. All lumber, except footing and posts with ground contact, shall contain no arsenic or chromium.
- 6A3.5.2**   Kiln-dry lumber after treatment to a maximum moisture content of 19 percent.
- 6A3.5.3**   Boardwalk treated lumber to be suitable grade for exposed lumber per AWPA UC4B. Footings and posts to be ground contact treated lumber per AWPA UC5C.
- 6A3.5.4**   Mark lumber with treatment quality mark of an inspection agency approved by the ALSC Board of Review.
- 6A3.5.5**   Application: Treat all shower carpentry, unless otherwise indicated.
- 6A3.6**     MISCELLANEOUS LUMBER:
- 6A3.6.1**   General:  
Provide miscellaneous lumber indicated and lumber for support or attachment of other construction, including the following:
- a. Blocking.
  - b. Nailers.
  - c. Rooftop equipment bases and support curbs.
  - d. Cants.
  - e. Grounds.
- 6A3.6.2**   For items of dimension lumber size, provide No. 1 grade (or better) lumber with 19 percent maximum moisture content of Southern Pine species.
- 6A3.6.3**   For concealed boards, provide lumber with 19 percent maximum moisture content and of the following species and grades:
- a. Southern pine, No. 2 grade (or better); SPIB.
- 6A3.7**     FASTENERS:
- 6A3.7.1**   General:  
Provide fasteners of size and type indicated that comply with requirements specified.
- a. Where rough carpentry is exposed to weather, in ground contact, pressure-preservative treated, or in area of high relative humidity, provide fasteners Type 304 stainless steel as indicated on the drawings.
- 6A3.7.2**   Power-Driven Fasteners: NES NER-272.
- 6A3.7.3**   Bolts:  
Steel bolts complying with ASTM A 307, Grade A (ASTM F 568M, Property Class 4.6); with ASTM A 563 (ASTM A 563M) hex nuts and, where indicated, flat washers.
- 6A3.8**     INSTALLATION:
- 6A3.8.1**   Set rough carpentry to required levels and lines, with members plumb, true to line, cut, and fitted. Fit rough carpentry to other construction; scribe and cope as needed for accurate fit. Locate nailers, blocking, grounds and similar supports to comply with requirements for attaching other construction.

- 6A3.8.2** Framing Standard:  
Comply with AF&PA's "Details for Conventional Wood Frame Construction," unless otherwise indicated.
- 6A3.8.3** Metal Framing Anchors:  
Install metal framing to comply with manufacturer's written instructions.
- 6A3.8.4** Do not splice structural members between supports, unless otherwise indicated.
- 6A3.8.5** Comply with AWP A M4 for applying field treatment to cut surfaces of preservative-treated lumber.
- 6A3.8.6** Securely attached rough carpentry work to substrate by anchoring and fastening as indicated, complying with the following:
- a. NES NER-272 for power-driven fasteners.
  - b. Table 2304.9.1, "Fastening Schedule," in ICC's International Building Code.
  - c. Table 23-11-B-1, "Nailing Schedule," and Table 23-II-B-2, "Wood Structural Panel Roof Sheathing Nailing Schedule," in ICBO's Uniform Building Code.
  - d. Table 2305.2, "Fastening Schedule," in BOCA's BOCA National Building Code.
  - e. Table 2306.1, "Fastening Schedule," in SBCCI's Standard Building Code.
  - f. Table R602.3(1), "Fastener Schedule for Structural Members," and Table R602.3(2), "Alternate Attachments," in ICC's International Residential Code for One and Two Family Dwelling.
  - g. Table 602.3(1), "Fastener Schedule for Structural Members," and Table 602.3(2), "Alternate Attachments," in ICC's International One and Two Family Dwelling Code.



## DIVISION 15 - MECHANICAL

### SECTION 15A - GENERAL PROVISIONS

#### 15A1<sup>[2]</sup> SUPPLEMENTARY GENERAL CONDITIONS FOR MECHANICAL WORK PERTAINING TO BUILDING CONSTRUCTION

##### 15A1.1 GENERAL AND SPECIAL CONDITIONS:

The General Conditions, Technical Specifications, Proposal Forms, Addenda and all other related documents issued in connection with the work are hereby made an integral part of this division and the accompanying drawings insofar as they are applicable to the work under this division unless otherwise hereinafter specified. The requirements of this section shall apply to all other sections of Division 15 - Mechanical Work.

##### 15A1.2 SCOPE:

The Contractor shall furnish all labor, material, equipment and tools necessary to execute all mechanical work as hereinafter specified, shown on the drawings and as necessary to provide complete and operating systems. All apparatus, equipment, devices and appliances that are indicated to have pipe connections shall be so equipped. Each such connection shall be valved and/or trapped. The Contractor shall install all mechanical equipment furnished under other divisions of this specification and shall provide all labor and materials to make final connections to the equipment.

##### 15A1.3 DRAWINGS AND SPECIFICATIONS:

All materials, equipment or systems related to this division and exhibited or scheduled on the drawings but not mentioned in the specifications are to be executed to the intent and meaning thereof, as if it were both mentioned in the specifications and set forth on the drawings.

##### 15A1.3.1 Specifications:

All work, equipment and materials shall conform to the requirements of all specifications and standards referenced in the technical sections of the specifications.

##### 15A1.3.2 Discrepancies in Drawings and Specifications:

Drawings and specifications are intended to be fully cooperative and to agree but should any discrepancy or apparent difference occur between drawings and specifications, or should error occur in the work of others which affects the mechanical work, the Contractor shall notify the City's Representative at once. If the Contractor proceeds with the work affected without instructions from the City's Representative, he shall make good any resultant damage or defect without additional cost to the City. All misunderstandings of drawings and specifications shall be clarified by the City's Representative. In case of differences between the drawings and specifications, the drawings shall govern first and then the specifications. Large-scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to material.

##### 15A1.3.3 Contract Drawings:

The drawings are diagrammatic and because of the small scale may not indicate all offsets, fittings, accessories or other items that may be required. The Contractor shall carefully investigate the structural and finish conditions affecting his work and shall arrange such work accordingly, furnishing all items as may be required for completely finished and operating systems.

##### 15A1.3.4 Departure from Drawings:

If any departures from the drawings are deemed necessary by the Contractor, details of such departures, including changes in related work, and the reasons therefore shall be submitted in writing, as soon as practicable after the contract award, to the City's Representative for written approval. Approved departures from the drawings shall be made at no additional cost to the City.

**15A1.4**     MATERIAL AND EQUIPMENT SUBSTITUTIONS:

Where materials or equipment are specified by patent, proprietary name, or name of the manufacturer, such specifications shall be deemed to be used for the purpose of establishing standards of quality, performance and physical characteristics for that particular item. Design is based on equipment listed in the equipment schedules and the drawings and as specified. All changes in foundations, bases, connections, piping, controls, walls and ceilings and sound and vibration isolation required by alternate equipment submitted and approved by the City's Representative, shall be made at no additional cost to the City. When a specific statement is included in the technical sections of the specifications that no substitutions will be considered or allowed, then no deviation from the material or equipment specified will be allowed and proposals shall be based upon providing only those materials or items of equipment originally specified.

**15A1.5**     LAWS, CODES AND ORDINANCES:

All work and materials shall conform to the laws of any public authority having jurisdiction at the job site. After award of the contract, the Contractor shall be wholly responsible for conformity with the applicable codes and all modifications to the work that may be required by an authority having legal jurisdiction over the work shall be made by the Contractor without additional cost to the City. All electrically operated equipment specified in this division shall comply with the National Electrical Code unless superseded by the requirements of local administrative authority.

**15A1.6**     SITE CONDITIONS:

The Contractor, before submitting a bid on the work, must visit the job site and familiarize himself with all visible existing conditions. The submission of a bid will be considered an acknowledgment on the part of the Bidder of his visitation to the job site and his agreement that he has satisfied himself regarding conditions affecting the work without recourse to any representation that may appear or seem to be implied in any portion of the bidding or contract documents. This specification and the drawings in no way imply the soil conditions to be encountered where excavation is required.

**15A1.7**     SCHEDULE OF WORK:

The mechanical work shall progress with the other trades so that no delays in construction are incurred. It is the responsibility of the Contractor for the completeness of his work and for giving timely and adequate information to other Contractors to enable proper installation, routing or support of mechanical equipment.

**15A1.7.1**    Cooperation with Other Contractors:

The Contractor shall cooperate with other contractors doing work on the project as may be necessary for the proper execution of the work of the various trades employed at the job site. The Contractor shall refer to the architectural, structural, mechanical and electrical drawings for construction details and shall coordinate his work with that of the other Contractors.

**15A1.7.2**    Removals and/or Repairs of Completed Work:

The Contractors shall pay all costs incurred for removals and/or repairs of completed work of other trades required by the late installation of mechanical materials or equipment. Such removals and/or repairs shall be performed by mechanics skilled in the trade of erecting the type of work involved.

**15A1.8**     CHASES AND OPENINGS:

It shall be the responsibility of this Contractor to ascertain that all chases and openings are properly located. The Contractor shall cooperate with the other trades to provide information as to openings in walls, roofs, floors and foundations required for ducts, piping and equipment.

**15A1.9**     PIPE SLEEVES, INSERTS, SUPPORTS AND ANCHOR BOLTS:

All sleeves, inserts, supports and anchor bolts required for mechanical work shall be furnished, accurately located and securely installed in forms before any concrete is poured.

**15A1.10** CUTTING AND REPAIRING:

The Contractor shall coordinate his work to eliminate cutting of the construction except as specified. When it becomes necessary to cut through the construction to permit the installation of work, it shall be done by mechanics skilled in the trade of erecting the type of work involved. Any drilling or cutting required for the performance of work under this division shall be the responsibility of this Contractor and the cost thereof shall be borne by him. In addition, this Contractor shall pay all additional costs of cutting of holes as the result of the incorrect location of sleeves. All holes through existing concrete shall be either core drilled or saw cut. Pneumatic impact tools will not be permitted. All holes required shall have the approval of the Structural Engineer or City's Representative in writing prior to cutting or drilling.

**15A1.11** EQUIPMENT FOUNDATIONS AND CONCRETE WORK:

All concrete equipment bases that are installed on vibration isolators, all anchors and thrust blocks, and all piping supports in trenches shall be provided by this Contractor. All formed and poured-in-place concrete work, including equipment housekeeping pads, sumps, etc., will be provided under the Concrete section of the specifications. This Contractor shall furnish all required templates for anchor bolts and dimensioned drawings for housekeeping pads and sumps. All concrete provided under this division shall be in accordance with that specified in the Concrete section of these specifications.

**15A1.12** HANDLING, STORAGE AND PROTECTION OF MATERIALS AND EQUIPMENT:

All manufactured materials shall be delivered and stored in their original containers. The Contractor shall have full responsibility for receiving, unloading, handling, storing and protecting his materials at the job site. Equipment and materials shall be protected at all times to prevent damage or breakage, either in transit, storage, installation or testing. All equipment openings shall be closed with caps or plugs until installed and connected. All materials and equipment shall be covered and protected against dirt, water, chemical or mechanical injury. Special care shall be taken to provide protection for bearings, pipe, coils, pumps, compressors, fans and similar equipment.

**15A1.13** CLEANING OF EQUIPMENT AND SYSTEMS:

All fixtures, piping, finished surfaces and equipment shall have all grease, adhesive labels and foreign materials removed. All water piping shall be flushed and drained to remove grease and foreign matter. Pressure regulating assemblies, traps, flush valves and similar items shall be thoroughly cleaned. Remove and thoroughly clean and reinstall all liquid strainer screens after the system has been in operation for ten (10) days. Refrigerant piping shall be blown out in clean compressed air or inert gas before equipment is connected. When connections are made to existing systems of any type, the Contractor shall do all cleaning and purging of the existing systems required to restore them to satisfactory conditions.

**15A1.14** SAFETY REQUIREMENTS:

Belts, pulleys, chains, gears, couplings, projecting setscrews, keys or other rotating parts located so that any person can come in close proximity thereto shall be fully enclosed or properly guarded.

**15A1.15** OPERATION AND MAINTENANCE MANUALS:

The Contractor shall provide an operation and maintenance instruction manual for each major item of mechanical equipment installed under this contract. The manual shall include, but not be limited to, installation and adjustment instructions; maintenance and overhaul instructions; lubrication schedule including type, grade, temperature range and frequency; safety precautions; diagrams and illustrations; test procedures; performance data; and parts list. It is intended that the manuals shall be complete in all respects for all equipment, controls, accessories and associated appurtenances provided.

**15A1.16** EXCAVATING AND BACKFILLING:

This Contractor shall perform all excavating and backfilling required for the Mechanical Work. The Contractor shall coordinate disposition of excavated materials to avoid interference with walls, footings

and other work. Provide barricade protection as required for safety. Backfilling shall not be done until after testing and inspection of installed pipe work. All plants, turf and surfacing that occur in the area of the excavation shall be carefully removed and placed where they will not be damaged. After the excavations are filled, the plants, turf and surfacing shall be replaced as directed. All sidewalks, drives or other concrete or asphalt surfaces that are damaged during excavation shall be repaired to match the adjacent work in material and finish.