



**CONTRACT DOCUMENTS**

**FOR**

**LEFT TURN LANE IMPROVEMENTS**

**ON MATLOCK ROAD**

**BID NO. 2024-41-04-07**

**Mansfield, Texas**

**August 2024**

**Prepared For**

**THE CITY OF MANSFIELD**

**Prepared By**

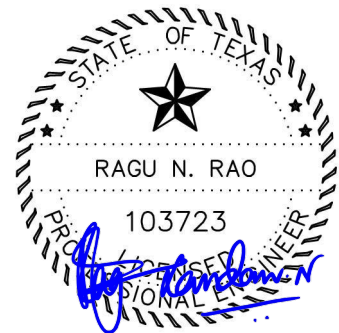


**TBPE No. 17261**

**2000 E Lamar Blvd, Ste 600**

**Arlington, Texas 76006**

**817.230.4777**



**08/22/2024**

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## **SECTION B**

### **INVITATION TO BID**

## SECTION B

### INVITATION TO BIDDERS

Sealed bids will be received at the office of the City Secretary, 1200 East Broad Street, Mansfield, Texas 76063 until **2:00 pm, Wednesday, September 11th, 2024,** and then publicly opened and read aloud for construction of:

#### LEFT TURN LANE IMPROVEMENT FOR MATLOCK ROAD

A cashier's check or acceptable Bidder's Bond for 5% of the bid amount must accompany each bid, as well as a completed Conflict of Interest Questionnaire as required by state law. The successful bidder will be required to provide performance and payment bonds, maintenance bond and insurance as detailed in the Contract Documents. Computer-generated bids will be accepted as detailed in the Contract Documents.

The Contract Documents may be examined without charge in the office of the City Engineer at the address shown above, and may be procured from the City Engineer between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. A non-refundable fee of Fifty Dollars (\$50.00) will be charged.

Advertisement and bid phase information for the Project can also be found at the following website:

<http://www.civcastusa.com>

Plans, Contract Documents and the Engineer's Project Cost Estimate may be downloaded or viewed free of charge by registering at this website. It is the downloader's responsibility to determine that a complete set of documents, as defined in the instructions to Bidders, is received. Printed copies of the Plans and Contract Documents may be purchased at the website. This website will be updated with addenda, plan holders lists, bid tabulations, additional reports or other information relevant to bidding the Project.

The City reserves the right to reject any or all bids and to waive formalities.

Advertisement Dates: **August 28th, 2024**  
**September 4th, 2024**  
Fort Worth Star-Telegram

**The following language is NOT to be included in the printed advertisement:**

**Project Manager: James Rogge**  
**Phone: 817-276-4233**

## **SECTION I**

### **INSTRUCTIONS TO BIDDERS**

## **SECTION I**

### **INSTRUCTIONS TO BIDDERS**

#### **1. DEFINED TERMS**

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. C-700, 2013 ed.) have the meanings assigned to them in the General Conditions. The term "BIDDER" means one who submits a Bid directly to OWNER, as distinct from a sub-bidder, who submits a bid to a BIDDER. The Term "Successful BIDDER" means the lowest, qualified, responsible and responsive BIDDER to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided in I-16) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Proposal, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

#### **2. COPIES OF BIDDING DOCUMENTS**

- 2.1** Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from OWNER. The deposit for the Bidding Documents is non-refundable.
- 2.2** Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3** OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

#### **3. QUALIFICATIONS OF BIDDER**

The successful BIDDER may be required to submit written evidence, such as financial data, present commitments and available equipment, and will submit such data within five days of OWNER'S written request.

#### **4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

- 4.1** It is the responsibility of each BIDDER before submitting a bid to (1) examine the Contract Documents thoroughly, (2) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the work, (3) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the work, (4) study and carefully correlate BIDDER'S observations with the Contract Documents and (5) notify

## **SECTION I - INSTRUCTIONS TO BIDDERS**

ENGINEER or OWNER of all conflicts, errors or discrepancies in the Contract Documents.

- 4.2** Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data furnished to OWNER by owners of such underground facilities or other, and OWNER does not assume responsibility for the accuracy or completeness thereof.
- 4.3** Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS on subsurface conditions, underground facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Article 5 of the General Conditions.
- 4.4** Before submitting a bid each BIDDER will, at BIDDER'S own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the work and which BIDDER deems necessary to determine its bid for performing and furnishing the work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 4.5** On request in advance OWNER will provide each BIDDER access to the site to conduct such explorations and tests, as each BIDDER deems necessary for submission of a bid. BIDDER shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.
- 4.6** The lands upon which the work is to be performed, right-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by OWNER.
- 4.7** The submission of a bid will constitute an incontrovertible representation by BIDDER that BIDDER has complied with every requirement of Item 4, that without exception the bid is premised upon performing and furnishing the work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.
- 4.8** Reference is made to Section 5.03 of the General Conditions for identification of:

## **SECTION I - INSTRUCTIONS TO BIDDERS**

- a). Those reports or explorations and tests of subsurface conditions at the site which have been utilized by OWNER in preparation of the Contract Documents. BIDDER may rely upon the accuracy of the technical data contained in such reports, except as qualified in the report, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for the purposes of bidding or construction. CONTRACTOR is alerted to the fact that certain subsurface conditions may change (such as groundwater levels) and that borings provide isolated information at the specific bore location only.
- b). Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except underground facilities) which are at or contiguous to the site which have been utilized by OWNER in preparation of the Contract Documents. BIDDER may rely upon the accuracy of the technical data contained in such drawings but not upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings will be made available by OWNER to any BIDDER on request. Those reports and drawings may or may not be part of the contract documents, but the technical data contained therein upon which BIDDER is entitled to rely as provided in Paragraphs a). and b). are incorporated therein by reference.

### **5. INTERPRETATIONS AND ADDENDA**

- 5.1. All questions about the meaning or intent of the Contract Documents are to be directed to OWNER or ENGINEER. Interpretations or clarifications considered necessary by OWNER or ENGINEER in response to such questions will be issued by Addenda and distributed to all documented parties as having received the Bidding Documents. Questions received less than 48 hours prior to the time for opening Bids may not be answered. Any addenda issued prior to the opening of bids will be distributed to each CONTRACTOR contemplating the submission of a proposal on this work. The CONTRACTOR will be notified of the issuance of the addenda. The proposal as submitted by the CONTRACTOR will be so constructed as to include any addenda if such are issued by the OWNER prior to twenty-four (24) hours of the opening of bids. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 5.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by OWNER or ENGINEER.

### **6. BID SECURITY**

- 6.1 Each bid must be accompanied by bid security made payable to OWNER in an amount of five percent of the BIDDER'S maximum Bid Price and in the form of



## **SECTION I - INSTRUCTIONS TO BIDDERS**

a certified bank check or a Bid Bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.

- 6.2** The Bid security of the Successful BIDDER will be retained until such BIDDER has executed the Agreement and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, OWNER may annul the Notice of Award and the bid security of that BIDDER will be forfeited. The bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the effective Date of the Agreement or the forty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive can be returned at the Bid opening upon BIDDER'S request.

### **7. CONTRACT TIME**

- 7.1.** The number of working days within which the work is to be completed and ready for final payment (the Contract Time) are set forth in the Proposal and Agreement.
- 7.2.** The CONTRACTOR should be aware that the Contract time includes all time the CONTRACTOR is on the site. This time is in working days and begins on the date stipulated on the Notice to Proceed. The time on the Contract will continue to run until the project is completed and approved by the City.

### **8. LIQUIDATED DAMAGES & EARLY COMPLETION INCENTIVE**

Provisions for liquidated damages and early completion incentives, if any, are set forth in the Agreement.

### **9. SUBSTITUTE OR "OR-EQUAL" ITEMS**

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to the ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement unless the ENGINEER, at his option, elects to issue an Addenda naming a substitute or "or-equal" item prior to receipt of bids. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in Sections 7.04 and 7.05 of the General Conditions and may be supplemented in the General Requirements.

## **SECTION I - INSTRUCTIONS TO BIDDERS**

### **10. SUBCONTRACTORS, SUPPLIERS AND OTHERS**

- 10.1.** If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations including those who are to furnish the principle items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful BIDDER, and any other bidder so requested, shall within seven days after the bid opening submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by OWNER. If OWNER or ENGINEER after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, either may before the Notice of Award is given request the apparent Successful Bidder to submit an acceptable substitute, in which case the apparent Successful BIDDER shall submit an acceptable substitute, that BIDDER'S Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and OWNER may consider such price adjustment in evaluating Bids and making the contract award.

If apparent Successful BIDDER declines to make any such substitutions, OWNER may award the contract to the next lowest BIDDER that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any BIDDER. Any subcontractor, Supplier, other person or organization listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Section 7.06 of the General Conditions.

- 10.2.** No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person or organization against whom CONTRACTOR has reasonable objection.

### **11. PROPOSAL**

- 11.1.** The proposal is included in the Bidding Documents and additional copies may be obtained from OWNER or ENGINEER. All bids must be submitted on the ENGINEER'S form.
- 11.2.** The Bidder may use the original Proposal forms included in these bid documents or the Bidder may substitute a computer-generated Proposal for the original Proposal included in these bid documents. If original Proposal is used, it must be completed in ink or by typewriter. If a Substitute Proposal is used, it

## **SECTION I - INSTRUCTIONS TO BIDDERS**

should be similar as written in the original Proposal contained herein. The Substitute Proposal shall also be signed by the Bidder.

- 11.3.** Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 11.4.** Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 11.5** All names must be typed or printed below the signature.
- 11.6.** The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Proposal).
- 11.7.** The address and telephone number for communications regarding the Bid must be shown.

### **12. SUBMISSION OF BIDS**

Bids must be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and the name and address of the BIDDER and accompanied by the bid security and other required documents (including CIQ Form if applicable). The CONTRACTOR shall acknowledge, on the outside of the envelope, receipt of any addenda. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. It shall be the BIDDER'S responsibility for the delivery of his Proposal at the proper place by the time stated. The mere fact that a Proposal was dispatched will not be considered.

### **13. MODIFICATION AND WITHDRAWAL OF BIDS**

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

### **14. OPENING OF BIDS**

Bids will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

## **SECTION I - INSTRUCTIONS TO BIDDERS**

### **15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

All bids will remain subject to acceptance for forty-five (45) days after the day of the Bids opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

### **16. AWARD OF CONTRACT**

- 16.1** OWNER reserves the right to reject any and all Bids, to waive any and all formalities, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, OWNER reserves the right to reject the Bid of any BIDDER if OWNER believes that it would not be in the best interest of the Project to make an award to that BIDDER, whether because the Bid is not responsible or the BIDDER is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the unit price in words and the unit price in figures will be resolved in favor of the price in words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct Sum.
- 16.2.** In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form prior to the Notice of Award.
- 16.3.** OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. OWNER also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 16.4.** OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of bidders, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.
- 16.5.** If the contract is to be awarded, OWNER will give the Successful BIDDER a Notice of Award within forty-five (45) days after the day of the Bid opening.

## **SECTION I - INSTRUCTIONS TO BIDDERS**

### **17. CONTRACT SECURITY**

Section 6 of the General Conditions and the Supplementary Conditions set forth OWNER'S requirements as to maintenance, performance and payment Bonds. When the Successful BIDDER delivers the executed Agreement to OWNER, it must be accompanied by the required maintenance, performance and payment Bonds.

### **18. TRENCH SAFETY**

The successful Bidder will be required to provide a trench safety plan at the time contracts are signed and within the 15-day time period after Notice of Award. All cost for providing and implementing the trench safety plan shall be included in the bid item for trench safety.

### **19. SIGNING OF AGREEMENT**

When OWNER gives a Notice of Award to the Successful BIDDER, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen days, thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds. Within ten days, thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR.

### **20. RETAINAGE**

Provisions concerning retainage are set forth in the Agreement.

### **21. SALES AND USE TAXES**

OWNER is exempt from Local and State Sales and Use Taxes on materials to be incorporated in the Work. Said taxes shall not be included in the Contract Price. However, CONTRACTOR must pay sales taxes on equipment rental, form materials, etc. not incorporated into the furnished project. Refer to Supplementary Conditions SC-7.09 for additional information.

### **22. WAGES**

Wage rates paid on this project must not be less than indicated on the Wage Rate Schedule included in these documents which is established by the City of Mansfield in compliance with statutory requirements and prevailing wages in the locality of the project.

## **SECTION C**

### **CONFLICT OF INTEREST QUESTIONNAIRE**

# **NOTICE TO ALL CITY VENDORS AND POTENTIAL VENDORS**

## **Chapter 176 of the Texas Local Government Code**

Chapter 176 of the Texas Local Government Code ("LGC") requires any vendor that contracts with or is seeking to contract with a local governmental entity to file a Conflict of Interest Questionnaire (FORM CIQ) if the vendor either:

- (1) has an employment or other business relationship with an officer or a family member of an officer of the local governmental entity;
- (2) has given an officer or a family member of an officer of the local governmental entity a gift or gifts with an aggregate value exceeding the maximum value permitted by Section 176.003(a)(2)(B) of the LGC not including gifts that are excluded under Section 176.003(a-1) of the LGC; or
- (3) has a family relationship with an officer of the local governmental entity.

The FORM CIQ was created by the Texas Ethics Commission and is available online at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

## **When must the FORM CIQ be filed?**

A vendor must file the FORM CIQ with the city no later than the seventh business day after the later of:

- (1) the date the vendor begins discussions with the local governmental entity to enter into a contract or the date the vendor submits an application or response to a request for proposals or bids; or
- (2) the date the vendor becomes aware that the vendor meets the requirements of Section 176.006 of the LGC.

## **Where must the FORM CIQ be filed?**

City of Mansfield  
Attn: City Secretary  
1200 E. Broad Street  
Mansfield, Texas 76063

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

☐ Yes ☐ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



**SECTION TEC**

**TEXAS ETHICS COMMISSION FORM 1295**

# CERTIFICATE OF INTERESTED PARTIES

## FORM 1295

### OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

☐

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Printed name of officer administering oath

\_\_\_\_\_  
Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

**SECTION SB**

**SENATE BILL 252 CERTIFICATION**



## **SENATE BILL 252 CERTIFICATION**

On this date, I, \_\_\_\_\_, an employee of the City of Mansfield, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253, and I have ascertained that the below-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
CONTRACT NUMBER

### **CERTIFICATION CHECK PERFORMED BY:**

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
PRINTED NAME OF EMPLOYEE

\_\_\_\_\_  
DATE

**SECTION P**

**P R O P O S A L**

**SECTION P**  
**PROPOSAL**  
**FOR**  
**LEFT TURN LANE IMPROVEMENT**  
**FOR**  
**MATLOCK ROAD**

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

To: Susana Marin, City Secretary  
City of Mansfield  
1200 East Broad Street  
Mansfield, TX 76063

Gentlemen:

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five (45) days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the bidding requirements within fifteen (15) days after the date of OWNER's Notice of Award.

## SECTION P - PROPOSAL

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

- 3.1 BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

DATE	NUMBER
_____	_____
_____	_____
_____	_____

- 3.2 BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 3.3 BIDDER has given ENGINEER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER.
4. This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or other corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
5. BIDDER will complete the Work for the prices indicated in the following schedule:

## SECTION P - PROPOSAL

PAY ITEM	APPROX QTY	UNIT	DESCRIPTION OF ITEMS WITH BID PRICES WRITTEN IN WORDS	UNIT PRICE	AMOUNT BID
<b>SECTION A – GENERAL ITEMS</b>					
1.	1	LS	MOBILIZATION FOR THE SUM OF _____DOLLARS AND _____CENTS PER LUMP SUM	\$	\$
2.	1	LS	SITE PREPARATION, COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER LUMP SUM	\$	\$
3.	1	LS	FURNISH, INSTALL, MAINTAIN & REMOVE EROSION CONTROL DEVICES, COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER LUMP SUM	\$	\$
4.	1	LS	PREPARE, FURNISH, INSTALL & MAINTAIN TEMPORARY TRAFFIC CONTROL DEVICES & DETOURS, COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER LUMP SUM	\$	\$
<b>SECTION B – PAVING ITEMS</b>					
1.	385	SY	REMOVE EXISTING CONCRETE PAVEMENT INCLUDING CURB, COMPLETE FOR THE SUM OF _____DOLLARS AND _____CENTS PER EACH	\$	\$



## SECTION P - PROPOSAL

PAY ITEM	APPROX QTY	UNIT	DESCRIPTION OF ITEMS WITH BID PRICES WRITTEN IN WORDS	UNIT PRICE	AMOUNT BID
2.	1,050	SY	7-IN REINFORCED CONCRETE PAVEMENT WITH 6-IN MONOLITHIC CURB, COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER LINEAR FOOT	\$	\$
3.	870	LF	INSTALL PAVEMENT MARKINGS, COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER EACH	\$	\$
4.	200	SY	RESTORE DISTURBED AREA (SODDING), COMPLETE IN PLACE FOR THE SUM OF _____DOLLARS AND _____CENTS PER SQUARE YARD	\$	\$

TOTAL BASE BID FOR ALL ITEMS (Words and Figures):

\_\_\_\_\_  
 \_\_\_\_\_DOLLARS  
 \_\_\_\_\_CENTS

\$ \_\_\_\_\_

6. BIDDER acknowledges that the quantities indicated in the previous schedule are not guaranteed and may be changed to conform to the Work. BIDDER has read Paragraph 13.03 of the Supplementary Conditions and understands that the quantities shown in the previous schedule and as modified by change order will be the actual quantities paid by the OWNER for the completion of the work.
7. BIDDER agrees that the Work will be completed and ready for final payment within sixty (60) working days from the date when the contract time commences to run.
8. BIDDER accepts the provisions of the Special Conditions as to liquidated damages in case of failure to complete the Work on time, and early completion incentives for early completion of the Work.
9. The terms used in this Bid which are defined in the General Conditions of Agreement included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

Respectfully submitted,

By \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone No. \_\_\_\_\_

Submitted by \_\_\_\_\_ a corporation

Doing business as \_\_\_\_\_

Communication concerning this Bid should be directed to the attention of:

\_\_\_\_\_

**SECTION A**

**A G R E E M E N T**

**SECTION A**  
**AGREEMENT**  
**BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2024 by and between the City of Mansfield (hereinafter called OWNER) and \_\_\_\_\_ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**LEFT TURN LANE IMPROVEMENT**

The project for which the Work under the Contract Documents may be the whole or only part is generally described as follows:

**LEFT TURN IMPROVEMENT FOR MATLOCK ROAD**

**Article 2. ENGINEER.**

The project has been designed by **WESTRA CONSULTANTS, LLC** who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assumes all duties and responsibilities and has the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**Article 3. CONTRACT TIME.**

- 3.1** The Work shall be completed and ready for final payment in accordance with paragraphs 15.06 of the General Conditions within **60 working days** from the date indicated in the Notice to Proceed or when the Contract Time commences to run as provided in Paragraph 4.01 of the General Conditions.
- 3.2** Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence in this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Section 11.05 of the General Conditions. Additionally, the OWNER shall benefit financially if the

## **SECTION A - AGREEMENT**

Work is completed ahead of the completion time. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that liquidated damages for delay (but not as a penalty) and financial incentives for early completion shall be compensated as per the schedule below.

### Late Completion Damages

Paid by CONTRACTOR to OWNER

6 to 10 days after Contract

Time Expiration - \$500 per day

Over 10 days after Contract

Time Expiration - \$1000 per day

## **Article 4. CONTRACT PRICE.**

- 4.1** OWNER shall pay CONTRACTOR for completion of the Work on a Unit Price Work Basis in accordance with the Contract Documents in current funds based on the contract quantities and unit prices stated in the proposal or as modified by change order, the sum of which (\$\_\_\_\_\_).

## **Article 5. PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1** Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment, on or about the thirtieth (30th) day of each month during construction. All progress payments will be on the basis of unit prices stated in the proposal and the completed units of work as determined by OWNER minus Ten percent (10%) retainage to be held by OWNER until final payment but, in each case, less the aggregate of payments previously made and less such amounts as OWNER shall determine, or OWNER may withhold, in accordance with Section 15.01 of the General Conditions.
- 5.2** Final Payment. Upon completion and acceptance of the Work in accordance with Sections 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in Section 15.06.

## SECTION A - AGREEMENT

### Article 6. INTEREST.

All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

### Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 **CONTRACTOR** has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, laws, and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 **CONTRACTOR** has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Contract Documents and accepts the determination set forth in Section 5.03 of the General Conditions of the extent of the technical data contained in such reports and drawings upon which **CONTRACTOR** is entitled to rely.
- 7.3 **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of Work as **CONTRACTOR** considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by **CONTRACTOR** for such purposes.
- 7.4 **CONTRACTOR** has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by **CONTRACTOR** in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 5 of the General Conditions.

## SECTION A - AGREEMENT

- 7.5 CONTRACTOR** has correlated the results of all such observations, examinations, investigations, exploration, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.
- 7.7** Statutory Provisions Applicable to State Political Subdivisions. As required by Chapter 2252 of the Texas Government Code (the "Code"), and as such terms are defined therein, **CONTRACTOR** is not listed on, nor does not do business with, "Companies" that are on the Texas Comptroller of Public Accounts' list of "Designated Foreign Terrorist Organizations." As required by Chapter 2271 of the Code, and as such terms are defined therein, **CONTRACTOR** verifies that it does not, nor will it, "boycott Israel" through the term of this Contract. As required by Chapter 2274 of the Code, and as such terms are defined therein, **CONTRACTOR** hereby verifies that it does not, nor will it, "boycott energy companies," through the term of this Contract. As required by Chapter 2274 of the Code, and as such terms are defined therein, **CONTRACTOR** hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association," and will not discriminate against a firearm entity or firearm trade association through the term of this Contract. As required by Chapter 113 of the Texas Business & Commerce Code, and as such terms are defined therein, **CONTRACTOR** is not owned by nor has the majority of stock or other ownership interest of the company held by (i) individuals who are citizens of China, Iran, North Korea, Russia or a "designated country", or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or a "designated country." **CONTRACTOR** is headquartered in \_\_\_\_\_, \_\_\_\_\_. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

### **Article 8. CONTRACT DOCUMENTS.**

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, consist of the following:

- 8.1** This Agreement (pages 1 to 6, inclusive).
- 8.2** Notice of Award.
- 8.3** CONTRACTOR'S Proposal (pages 1 to 8, inclusive).

## **SECTION A - AGREEMENT**

- 8.4** General Conditions (pages 1 to 65 inclusive).
- 8.5** Supplementary Conditions (pages 1 to 7, inclusive).
- 8.6** General Requirements (pages 1 to 16, inclusive).
- 8.7** Specifications bearing the title "NCTCOG Standard Specifications for Public Works Construction" and consisting of divisions 2-8, as listed in the Table of Contents thereof. A set of specifications is not attached to the signed Contract Documents but may be obtained from the North Central Texas Council Of Governments.
- 8.8** Drawings, consisting of a cover sheet bearing the title "DRAINAGE IMPROVEMENTS FOR SHADOW OAKS NEIGHBORHOOD", and Standard Construction Details of the City of Mansfield. A set of drawings is not attached to the signed Contract Documents but may be obtained from the Engineer.
- 8.9** Performance and Payment Bonds, identified as Section PB and consisting of 4 pages.
- 8.10** Maintenance Bond, identified as Section MB and consisting of 3 pages.

There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Article 11 of the General Conditions.

### **Article 9. MISCELLANEOUS**

- 9.1** Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.
- 9.2** No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound, and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3** OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.



## SECTION A - AGREEMENT

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed five copies of this Agreement. Three counterparts have been delivered to OWNER and two counterparts have been delivered to CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

OWNER

CONTRACTOR

CITY OF MANSFIELD

By \_\_\_\_\_  
City Manager or his/her designee

By \_\_\_\_\_

(Corporate Seal)

(Corporate Seal)

Attest \_\_\_\_\_  
Susana Marin, City Secretary

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

1200 East Broad Street  
Mansfield, Texas 76063

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

List name of person to whose attention notices are to be sent:

\_\_\_\_\_  
(If CONTRACTOR is a corporation attach evidence of authority to sign.)

Approved as to Form Only/Not Content

\_\_\_\_\_  
City Attorney Date

## **SECTION PB**

### **PERFORMANCE & PAYMENT BONDS**

## PERFORMANCE BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS       §  
COUNTY OF \_\_\_\_\_§

### KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ of the City  
of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_,  
(hereinafter referred to as "Principal"), and \_\_\_\_\_  
(hereinafter referred to as "Surety"), authorized under the laws of the State of  
Texas to act as surety on bonds for principals, are held and firmly bound unto  
City of Mansfield (hereinafter referred to as "Owner") in the penal sum of

\_\_\_\_\_

for the payment whereof, the said Principal and Surety bind themselves, and  
their heirs, administrators, executors, successors and assigns, jointly and  
severally, by these presents:

**WHEREAS**, the Principal has entered into a certain written contract  
with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to construct LEFT  
TURN LANE IMPROVEMENT FOR MATLOCK ROAD which contract is hereby  
referred to and made a part hereof as fully and to the same extent as if copied at  
length herein.

**NOW, THEREFORE**, the condition of this obligation is such, that if  
the said Principal fully and faithfully executes the work and performance of the  
contract in accordance with the plans, specifications, and contract documents,  
including any extensions thereof, and according to the true intent and meaning of  
said contract and the plans and specifications hereto annexed, then this  
obligation shall be void; otherwise, to remain in full force and effect.

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the  
provisions of Chapter 2253 of the Texas Government Code, Public Work  
Performance and Payment Bonds, as amended, and Chapter 53.201 of the  
Texas Property Code, and all liabilities on this bond shall be determined in  
accordance with the provisions of said Article to the same extent as if they were  
fully copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

**IN WITNESS WHEREOF**, the said Principal and surety have signed and sealed this instrument on this the \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

---

**PRINCIPAL**

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

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

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

---

**SURETY**

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

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

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_

## PAYMENT BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS       §  
COUNTY OF           §

### KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ of the City  
of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_,  
(hereinafter referred to as "Principal"), and \_\_\_\_\_  
(hereinafter referred to as "Surety"), authorized under the laws of the State of  
Texas to act as surety on bonds for principals, are held and firmly bound unto  
City of Mansfield (hereinafter referred to as "Owner") in the penal sum of

\_\_\_\_\_

for the payment whereof, the said Principal and Surety bind themselves, and  
their heirs, administrators, executors, successors and assigns, jointly and  
severally, by these presents:

**WHEREAS**, the Principal has entered into a certain written contract  
with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to construct LEFT  
TURN LANE IMPROVEMENT FOR MATLOCK ROAD which contract is hereby  
referred to and made a part hereof as fully and to the same extent as if copied at  
length herein.

**NOW, THEREFORE**, the condition of this obligation is such, that if  
the bond guarantees the full and proper protection of all claimants supplying  
labor and material in the prosecution of the work provided for in said contract and  
for the use of each claimant, and that conversely should the Principal faithfully  
perform said contract and in all respects duly and faithfully observe and perform  
all and singular the covenants, conditions, and agreements in and by said  
contract agreed to by the Principal, and according to the true intent and meaning  
of said contract and the claims and specifications hereto annexed, then this  
obligation shall be void; otherwise, to remain in full force and effect.

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the  
provisions of Chapter 2253 of the Texas Government Code, Public Work  
Performance and Payment Bonds, as amended, and Chapter 53.201 of the  
Texas Property Code, and all liabilities on this bond shall be determined in

accordance with the provisions of said Article to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

**IN WITNESS WHEREOF**, the said Principal and surety have signed and sealed this instrument on this the \_\_\_\_ of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**PRINCIPAL**

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**SURETY**

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_

\_\_\_\_\_

## **SECTION MB**

### **MAINTENANCE BOND**

## MAINTENANCE BOND

BOND NO. \_\_\_\_\_

STATE OF TEXAS       §  
COUNTY OF \_\_\_\_\_§

### KNOW ALL MEN BY THESE PRESENTS:

**THAT**, \_\_\_\_\_, hereinafter called CONTRACTOR, as principal, and \_\_\_\_\_, a corporation organized under the laws of the State of Texas, as surety, do hereby acknowledge themselves to be held and bound to pay unto the City of Mansfield, a municipal Corporation, chartered by virtue of the Constitution and Laws of the State of Texas, at Mansfield, in Tarrant County, Texas, the sum of

\_\_\_\_\_ lawful money of the United States, for the payment of which sum well and truly to be made unto said City of Mansfield and its successors, said CONTRACTOR and surety do hereby bind themselves, their heirs, executors, administrators, assigns and successors, jointly and severally.

This obligation is conditioned, however; that,

**WHEREAS**, said CONTRACTOR has this day entered into a written Contract with the City of Mansfield, Texas, the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is attached hereto and made a part hereof, LEFT TURN LANE IMPROVEMENT FOR MATLOCK ROAD which this contract is hereby referred to and made a part hereof as fully and to the same extent as if copied verbatim herein, such project and construction in the City of Mansfield, together with the necessary grading and excavation, which Contract and Specifications therein mentioned adopted by the City are expressly made a part hereof, as though written herein in full; and,

**WHEREAS**, in said Contract, CONTRACTOR binds itself to use such materials and to so construct the work that it will remain in good repair and conditions for and during the period of two (2) years after the date of final acceptance of the work by the City, and,

**WHEREAS**, said CONTRACTOR binds itself to maintain said work in good repair and condition for said term of two (2) years; and,



**WHEREAS**, said CONTRACTOR binds itself to repair or reconstruct the work in whole or in part at anytime within said period, if in the opinion of the City ENGINEER in the City of Mansfield, it be necessary; and,

**WHEREAS**, said CONTRACTOR binds itself, upon receiving notice of the need thereof to repair or reconstruct said work as herein provided.

**NOW, THEREFORE**, if said CONTRACTOR shall keep and perform its said agreement to maintain, repair or reconstruct said work in accordance with all the terms and conditions of said Contract, these presents shall be null and void, and have no force or effect. Otherwise, this Bond shall be and remain in full force and effect, and said City shall have and recover from the said CONTRACTOR and its surety damages in the premises as prescribed by said Contract.

This obligation shall be a continuing one and successive recoveries may be had hereon for successive breaches until the full amount hereof is exhausted.

**IN WITNESS WHEREOF,**\_\_\_\_\_has caused these presents to be executed in five counterparts by its authorized \_\_\_\_\_ and said \_\_\_\_\_ has caused these presents to be executed in five counterparts by its Attorney In Fact and attested by its corporate seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**CONTRACTOR**

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

\_\_\_\_\_  
**SURETY**

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

**ATTORNEY IN FACT**

**WITNESS:**

\_\_\_\_\_

**(SEAL)**

**SECTION CI**

**CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No. Ext):	FAX (A/C, No):	
INSURED	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :		
	INSURER B :		
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> L						
	<b>AUTOMOBILE LIABILITY</b>						BINED SINGLE LIMIT (Per accident) \$
	<input type="checkbox"/> ANY AUTO						LY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHED AUTOS	<input type="checkbox"/> NON-O AUTOS				LY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						ERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<b>EXCESS LIAB</b>	<input type="checkbox"/> OCCUR					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE					\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y / <input type="checkbox"/> N	<input type="checkbox"/> N / <input type="checkbox"/> A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

## **SECTION GC**

### **GENERAL CONDITIONS**



## License Agreement

### Before you use this EJCDC document:

1. **Read this License Agreement in its entirety.** As purchaser, you agree to comply with and are bound by the License Agreement's terms, conditions, and instructions when you use the attached EJCDC document.  
**Commencement of use of the attached document indicates your acceptance of these terms, conditions, and instructions.** If you do not agree to them, you should promptly return the materials to the vendor.
2. **This License Agreement applies to the attached document only. Other licensing terms and instructions may apply to other EJCDC documents.**
3. The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents (including but not limited to the EJCDC document that is attached, and all other documents in the EJCDC Construction Series, Engineering Series, Design-Build Series, Remediation Series, Procurement Series, and Narrative Series)** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.
4. You acknowledge that you understand that the text of the **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.
5. Make sure that you have the correct word processing software for the attached EJCDC document, which is distributed in Microsoft Word (.doc) format.
6. EJCDC allows the end user wide discretion in using and editing the attached document, subject to the provisions of the License Agreement. You are advised, however, that EJCDC documents contain numeric and other cross-references, and that changes to one part of the document may affect other parts. It is solely your responsibility to assure the adequacy and consistency of the final document for your purposes.

### How to Use This Document:

1. Although EJCDC has made reasonable efforts to achieve uniformity of formatting, some document controls (e.g.,

bold, underline, font size, indentation, numbering, pagination, table of contents) may be affected by software versioning and translators, user settings, changes during editing, and other factors, and may require user intervention to restore intended format and appearance.

2. The term "Standard EJCDC Text" for the attached document generally refers to all text prepared by EJCDC in the main body of the document, and does not include covers, logos, footers, instructions, license agreement, copyright notices, Notes to Users, or text options. The content of document exhibits (if any) is not Standard EJCDC Text for this purpose.
2. If you do not alter the Standard EJCDC Text of the attached document, you may use it as published, with all EJCDC logos, footers, and copyright notices retained.
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## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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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 seeking 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 consider 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;
  - l. 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.

## **SECTION SC**

### **SUPPLEMENTARY CONDITIONS**

## **SECTION SC**

### **SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2013 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

#### **NUMERICAL DESIGNATIONS OF THE FOLLOWING SECTIONS CORRELATE TO THE AMENDED SECTIONS OF THE GENERAL CONDITIONS.**

##### **1.01 DEFINED TERMS**

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. C-700, 2013 ed.) have the meanings assigned to them in the General Conditions unless specifically defined in these Supplementary Conditions.

Working Day – A working day is any calendar day except for the following:

- 1) Saturday or Sunday or any day designated as a holiday by the City of Mansfield.
- 2) Any day in which weather or conditions not under control of the CONTRACTOR prevents construction of the work for a period of at least six (6) hours between 8:00 a.m. and 5:00 p.m. In these Contract Documents the term day refers to a calendar day unless specifically termed a working day.

##### **2.05 INITIAL ACCEPTANCE OF SCHEDULES**

Delete Paragraph 2.05.A of the General Conditions in its entirety and insert the following in its place:

“The ENGINEER may give final approval to schedules as submitted in accordance with Section 2.03 of the General Conditions or as determined in the Preconstruction Conference without convening a separate conference for that purpose, and will so notify the CONTRACTOR.”

##### **3.01.B INTENT**

Add the following language to Paragraph 3.01.B of the General Conditions:

“In the event there are any conflicts between the plans, the specifications or other Contract Documents the priority of interpretation will be as follows: Signed Contract Agreement, bonds, CONTRACTOR’S Proposal, Project Drawings or

## **SECTION SC - SUPPLEMENTARY CONDITIONS**

Plans, Supplementary Conditions, General Conditions, Project Specifications, Referenced Specifications.”

### **4.01.A COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED**

Delete Paragraph 4.01.A of the General Conditions in its entirety and insert the following in its place:

“Commencement of Contract Time shall begin on the date indicated in the Notice to Proceed. OWNER may issue a Notice to Proceed at any time suitable to OWNER. The date indicated in the Notice to Proceed will be determined prior to executing the agreement.”

### **4.03 REFERENCE POINTS**

Add Paragraph 4.03.B to the General Conditions to read as follows:

“Project horizontal and vertical control along the line and grade stakes shall be provided once by the OWNER through his Surveyor. The CONTRACTOR shall be responsible for protecting and preserving all stakes thus set, and any additional staking shall be at the CONTRACTOR’S expense. The ENGINEER shall be notified at least 48 hours in advance of the need for construction staking.”

### **5.03.A SUBSURFACE AND PHYSICAL CONDITIONS**

Modify the first sentence in Paragraph 5.03.A to read:

“Reports and Drawings: The Contract Documents identify:”

### **6.01 PERFORMANCE, PAYMENT AND OTHER BONDS**

Add the following language at the end of Paragraph 6.01.A of the General Conditions:

“All Bonds shall be in accordance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

Performance and Payments Bonds shall be furnished in favor of the OWNER for one hundred percent (100%) of the Contract Price. A Maintenance Bond shall be furnished in the amount of one hundred percent (100%) of the Contract Price in favor of the OWNER for a period of two (2) years and shall be executed by an approved surety company authorized to do business in the State of Texas.”

### **6.02 INSURANCE—GENERAL PROVISIONS**

Add the following language to the end of Paragraph 6.02.C of the General Conditions:

## SECTION SC - SUPPLEMENTARY CONDITIONS

“CONTRACTOR shall name the City of Mansfield as additional insured under CONTRACTOR’S general liability policy. The commercial liability insurance form and policy may be used in lieu of comprehensive general liability form. The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by laws and regulations.”

### 6.03 CONTRACTOR’S INSURANCE

Delete Section 6.03 of the General Conditions in its entirety and insert the following in its place:

“A. Contractor shall purchase the following types of insurance with the following limits:

*Worker’s Compensation:*

- |     |   |           |
|-----|---|-----------|
| (1) | State:                                    | Statutory |
| (2) | Applicable Federal (e.g., Longshoremen’s) | Statutory |
| (3) | Employer’s Liability:                     | \$100,000 |

*Comprehensive General Liability:*

- (1) Bodily Injury (including completed operations and products liability):

\$1,000,000	Each Occurrence
\$2,000,000	Annual Aggregate

- (2) Property Damage:

\$500,000	Each Occurrence
\$1,000,000	Annual Aggregate
or a combine single limit of	\$1,000,000

- (3) Property Damage Liability Insurance will provide Explosion, Collapse and Underground coverage where applicable.

- (4) Personal Injury, with employment exclusion deleted.

\$1,000,000	Annual Aggregate
-------------	------------------

*Comprehensive Automobile Liability:*

- (1) Bodily Injury:

## SECTION SC - SUPPLEMENTARY CONDITIONS

\$1,000,000  
\$1,000,000

Each Person  
Each Occurrence

(2) Property Damage:

\$500,000  
or combined single limit of

Each Occurrence  
\$1,000,000

“Umbrella” Excess Liability:

\$2,000,000 combined limit, bodily injury and property damage.

B. The contractual liability shall provide coverage for not less than the following amounts:

Bodily Injury:

\$1,000,000

Each Occurrence

Property Damage:

\$500,000  
\$500,000

Each Occurrence  
Annual Aggregate

### 6.05 PROPERTY INSURANCE

Add the following language to the end of Paragraph 6.05.A of the General Conditions:

“OWNER will not obtain Insurance. The contractor must provide insurance covering the losses described in the General Conditions for all work in place and materials on hand when such portions of the work are to be included in an application for payment.”

### 7.09 TAXES

Add the following language at the end of Paragraph 7.09.A of the General Conditions:

“This contract is issued by an organization which qualifies for sales, excise and use tax exemption pursuant to the provisions of V.T.C.A., Tax Code, Section 151.309 Governmental Entities. CONTRACTOR may purchase all materials and equipment to be incorporated into the finished work by issuing to his supplier an exemption certificate in lieu of the sales tax. However, in accordance with the provisions of 1HB 11, CONTRACTOR must pay sales tax on equipment rental, and materials and supplies which are purchased but not incorporated into the finished project.”

## SECTION SC - SUPPLEMENTARY CONDITIONS

### 7.18 INDEMNIFICATION

Delete Section 7.18 of the General Conditions and insert the following in its place:

**“CONTRACTOR ASSUMES ENTIRE RESPONSIBILITY AND LIABILITY FOR, AND AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD OWNER, OWNER’S AGENTS, EMPLOYEES, REPRESENTATIVES AND INSURERS HARMLESS FROM, ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, ATTORNEYS’ FEES, LITIGATION EXPENSES, CAUSES OF ACTION, DEMANDS, LOSSES AND/OR DAMAGES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY INCIDENTAL TO THE PERFORMANCE OF WORK OR SERVICES UNDER THIS CONTRACT BY CONTRACTOR, CONTRACTOR’S EMPLOYEES, AGENTS, REPRESENTATIVES AND INDEPENDENT CONTRACTORS. THIS PROVISION APPLIES WITH FULL FORCE AND EFFECT FOR ANY AND ALL CLAIMS, DEMANDS, ALLEGATIONS OR ACTIONS FOUNDED IN WHOLE OR IN PART FROM THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL ACTS, OR ALLEGED NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL ACTS, OF OWNER, OWNER’S AGENTS, EMPLOYEES, REPRESENTATIVES, AND INDEPENDENT CONTRACTORS, AS WELL AS CONTRACTOR, CONTRACTOR’S AGENTS, EMPLOYEES, REPRESENTATIVES AND INDEPENDENT CONTRACTORS. THIS INDEMNITY PROVISION IS TO BE CONSTRUED AS BROADLY AS POSSIBLE TO INCLUDE ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, CAUSES OF ACTIONS, DEMANDS, LOSSES, AND/OR WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, CAUSES OF ACTION AND DAMAGES SOUNDING IN TORT, PERSONAL INJURIES, CONTRACT DAMAGES, ECONOMIC DAMAGES, STRICT LIABILITY, STRICT PRODUCTS LIABILITY AND PRODUCTS LIABILITY, COMMON LAW NEGLIGENCE AND GROSS NEGLIGENCE, INTENTIONAL TORTS, FEDERAL AND STATE STATUTORY AND COMMON LAW PUNITIVE AND/OR MULTIPLIED DAMAGES, WORKERS’ COMPENSATION CLAIMS, CLAIMS UNDER THE TEXAS TORT CLAIMS ACT, EMPLOYMENT DISPUTES, WRONGFUL DISCHARGE, FEDERAL AND STATE CIVIL RIGHTS CLAIMS, CLAIMS FOUNDED IN CONTRACT OR QUASI-CONTRACT, BREACH OF WARRANTY, CLAIMS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, AND ANY AND ALL CLAIMS, CAUSES OF ACTION OR DEMANDS, WHEREBY ANY LOSS IS SOUGHT AND/OR INCURRED AND/OR PAYABLE BY OWNER, OWNER’S AGENTS, EMPLOYEES, REPRESENTATIVES, AND/OR INSURERS. THIS PROVISION IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, AND IT IS EXPRESSLY RECOGNIZED BY ALL PARTIES TO THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS**

## **SECTION SC - SUPPLEMENTARY CONDITIONS**

**NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST CONTRACTOR, CONTRACTOR'S AGENTS, EMPLOYEES, REPRESENTATIVES, AND INDEPENDENT CONTRACTORS. CONTRACTOR HAS READ, FULLY UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROVISION AND THE INDIVIDUAL SIGNING THIS CONTRACT ON BEHALF OF CONTRACTOR HAS FULL AUTHORITY TO BIND CONTRACTOR TO THIS CONTRACT AND THIS INDEMNITY PROVISION CONTAINED HEREIN. IT IS FURTHER RECOGNIZED AND AGREED THAT, SHOULD ANY PARTICULAR PORTION OR PROVISION OF THIS INDEMNITY PROVISION BE HELD INVALID, VOID AND/OR UNENFORCEABLE, IT SHALL NOT EFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINDER OF THIS PROVISION.**

**CONTRACTOR AGREES TO MAINTAIN AT CONTRACTOR'S SOLE COST AND EXPENSE, INSURANCE OF ANY AND ALL TYPE AND WITH MINIMUM LIMITS AS FOLLOWS, AND FURNISH CERTIFICATES TO OWNER EVIDENCING SUCH INSURANCE WITH INSURERS ACCEPTABLE TO OWNER:**

**ALL INSURANCE COVERAGES CARRIED BY THE CONTRACTOR'S, WHETHER OR NOT REQUIRED HEREBY, SHALL EXTEND TO AND PROTECT OWNER, OWNER'S AGENTS, EMPLOYEES, REPRESENTATIVES, AND INDEPENDENT CONTRACTORS, TO THE FULL EXTENT OF SUCH COVERAGES AND CONTRACTOR AGREES TO NAME OWNER AS AN ADDITIONAL INSURED UNDER EACH SUCH INSURANCE COVERAGE. SAID INSURANCE SHALL APPLY TO ANY AND ALL LIABILITY OF THE CONTRACTOR, CONTRACTOR'S AGENTS, REPRESENTATIVES, EMPLOYEES, AND/OR INDEPENDENT CONTRACTORS, ARISING FROM THE INDEMNITY PROVISION IN THIS SECTION.**

**HOWEVER, LIABILITY OF THE CONTRACTOR, AS PROVIDED IN THIS SECTION SHALL NOT BE LIMITED BY THE INSURANCE COVERAGE REQUIRED OF CONTRACTOR IN THIS PROVISION."**

### **13.03 UNIT PRICE WORK**

Add the following Paragraph to Section 13.03 of the General Conditions:

- "F. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment if the total cost of a particular item of Unit Price work amounts to 5% or more of the Contract Price and the variation in the contract price differs by more than 20% from the initial contract prices established on the effective date of the Agreement. CONTRACTOR or



## **SECTION SC - SUPPLEMENTARY CONDITIONS**

OWNER may make a claim for a change in the Contract Price in accordance with Article 11 of the General Conditions if the parties are unable to agree as to the amount of adjustment.”

### **15.01        PROGRESS PAYMENTS**

Revise the beginning of the first sentence of Paragraph 15.01.B.1 of the General Conditions to read as follows:

“At least thirty (30) days before each progress payment...”

## **SECTION GR**

### **GENERAL REQUIREMENTS**

**SECTION GR**  
**GENERAL REQUIREMENTS**

**1. ABBREVIATIONS**

Whenever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as shown below.

AASHTO	American Association of State Highway and Transportation Officials
Ac.	Acres
ANSI	American National Standards Institute
ASA	American Standards Association
Asph.	Asphalt
ASTM	American Society for Testing and Materials
ATMOS	ATMOS Energy
AT&T	American Telephone & Telegraph Company
Ave.	Avenue
AWS	American Welding Society
AWWA	American Water Works Associations
B/B	Back-of-curb to Back-of-curb
Bldg.	Building
Blvd.	Boulevard
CH	Chord of Curve
CI	Cast Iron
CL	Centerline
CMP	Corrugated Metal Pipe
CO	Cleanout
Conc.	Concrete
Cond.	Conduit
Const.	Construct
Corr.	Corrugated
Cr.	Circle
Ct.	Court
Cu.	Cubic
Culv.	Culvert
CY	Cubic yard
Dia.	Diameter
Dr.	Driveway or Drive
Elev.	Elevation
Esmt.	Easement
Exist. Or EX.	Existing

## SECTION GR - GENERAL REQUIREMENTS

F	Fahrenheit
F/F	Face-of-curb to Face-of-curb
FH	Fire Hydrant
FL	Flowline
Ft. or ‘	Foot or Feet
Gal.	Gallon
GV	Gate Valve
Hdwl.	Headwall
HP	Horsepower
Hr.	Hour
ID	Inside Diameter
In. or “	Inch or Inches
L	Length of Curve
Lat.	Lateral
Lb.	Pound
LF	Linear Foot or Feet
Ln	Linear
Ln.	Lane
Max.	Maximum
MH	Manhole
Min.	Minimum
Mono.	Monolithic
NCTCOG	North Central Texas Council of Governments
No.	Number
OD	Outside Diameter
ONCOR	Oncor Electric Delivery
%	Percent
PC	Point of Curvature
PCC	Point of Compound Curvature
PI	Plasticity Index or Point of Intersection
PRC	Point of Reverse Curvature
PSI	Pounds per Square Inch
PT	Point of Tangency
PVC	Polyvinyl Chloride or Point of Vertical Curvature
PVT	Point of Vertical Tangency
R	Radius
RCCP	Reinforced Concrete Cylinder Pipe
RCP	Reinforced Concrete Pipe
Reinf.	Reinforced or Reinforcing
Rem.	Remove
Rep.	Replace
Ret.	Retaining
R/W, R-of-W, or R.O.W.	Right-of-Way
Sani, or San.	Sanitary
Sec.	Second

## SECTION GR - GENERAL REQUIREMENTS

SD	Storm Drain
SS	Sanitary Sewer
Sq.	Square
St.	Street or Storm
Sta.	Station
Std.	Standard
SY	Square Yard
T	Tangent Length of Curve
Tr.	Terrace
T.X.D.O.T.	Texas Department of Transportation
UE	Underground Electric Cable
U.C.E.S.	United Cooperative Electric Services
U.P.R.R.	Union Pacific Railroad
UT	Underground Telephone Cable
VC	Vertical Curve
VCP	Vitrified Clay Pipe
Vert.	Vertical
Vol.	Volume
VPI	Vertical Point of Intersection
W.L.	Water Line
Yd.	Yard

### 2. SUBMITTALS

Within fifteen days after the CONTRACTOR receives a Notice of Award the CONTRACTOR will submit the following schedules in accordance with Section 2 of the General Conditions.

- 1) An estimated progress schedule showing the estimated starting and completion times, in days, from Notice to Proceed for the major components of the work. Show time for cleanup, testing and inspection on the schedule.
- 2) If the CONTRACTOR anticipates requesting partial payment for any incomplete lump sum items, submit a schedule showing the values of the various stages of construction for that item. The unit prices in the proposal will serve as the schedule of values used to determine partial payments.
- 3) Traffic control and sequence of construction plan details.

### 3. TESTING

Paving subgrade testing, trench backfill testing and concrete strength testing shall be provided by the OWNER. The first test shall be at the OWNER'S expense. Retests due to original test failure shall be at the CONTRACTOR'S expense. All other testing required shall be provided by the CONTRACTOR.

## **SECTION GR - GENERAL REQUIREMENTS**

Pavement coring to verify proper thickness as required by the City of Mansfield Material Testing Policy shall be performed by and paid for by the CONTRACTOR. Cleaning, sterilizing, hydrostatic testing, air testing, mandrel testing and video inspection of water and sanitary sewer lines required by the City of Mansfield shall be performed by and paid for by the CONTRACTOR. The cost for testing paid by the CONTRACTOR should be included in the unit price of the items being tested.

### **4. UTILITIES**

The OWNER will not furnish water for use on this project from the City water system. The CONTRACTOR will be required to use a City water meter and provide a deposit for the meter (currently \$800.00) and pay any costs generated from use. The OWNER will not furnish electric power or any other utility required for performance of the work. CONTRACTOR shall furnish these items and the cost thereof included in the related unit prices for the work.

### **5. SECURITY**

The CONTRACTOR will be responsible for the security of his work and survey staking for his work from the time he is given Notice to Proceed until the OWNER'S final payment and acceptance of the work. Security measures taken by the CONTRACTOR shall not prevent access to the traveling public.

### **6. DUST CONTROL**

It shall be the contractor's continuous responsibility at all times, including nights, holidays, weekends, etc., to maintain the work area relatively free of dust in a manner which will not cause inconvenience to the public. Dust control will be achieved by the application of water by sprinkling in amounts sufficient to control dust.

### **7. EROSION CONTROL**

This item consists of furnishing all labor and materials necessary for the installation and maintenance of erosion controls and implementation of the Storm Water Pollution Prevention Plan (SWPPP). The CONTRACTOR shall be considered the operator with day to day operational control of the construction site and SWPPP per Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000. All work shall conform to City standards, NCTCOG Standard Spec. Item 201, "Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control", and TPDES General Permit No. TXR150000.

## SECTION GR - GENERAL REQUIREMENTS

The City shall provide an Erosion Control Plan (ECP) to the Contractor for use in preparing a SWPPP. The CONTRACTOR will be responsible for preparing a SWPPP for all construction site areas in accordance with TPDES General Permit No. TXR150000 requirements. Two copies of the signed, prepared SWPPP must be submitted to the City prior to construction activities beginning. A statement within the SWPPP will identify the CONTRACTOR as the day-to-day operator responsible for the installation, inspection and maintenance of all erosion and sediment control best management practices (BMPs), devices and controls. An additional statement within the SWPPP will identify the CITY as the operator with control over construction plans and specifications. The CONTRACTOR shall submit a completed notice of intent (NOI) to the State at least 48 hours prior to any construction activity beginning. A construction site notice (CSN), signed in accordance with 30 TAC § 305.44, shall be posted at the site and a copy submitted to the City at least 48 hours prior to any construction activity beginning. The CONTRACTOR will be the operator of the ECP and SWPPP and can revise, update, amend or modify as necessary to remain in compliance with the TPDES permit. This item includes the installation, inspection and maintenance of BMP's, devices and controls as detailed in the latest addition of NCTCOG's Design Manual for Construction, December 2003, or other necessary controls as may be required to remain in compliance with the TPDES General Permit No. TXR150000.

Measure and Payment for this item shall be made per the lump sum price bid for erosion control and SWPPP implementation for the limits of construction shown in the plans and shall be full payment for all materials, labor, equipment and other incidentals necessary to install and maintain the erosion controls complete and in place and fully comply with the SWPPP and the TPDES General Permit No. TXR150000. The costs of maintenance or any additional erosion controls above and beyond those described in the SWPPP and ECP necessary to maintain compliance with the TPDES permit are subsidiary to this pay item. The CONTRACTOR shall be responsible for conducting inspections of BMPs, devices and controls as prescribed in the SWPPP and in accordance with TPDES General Permit No. TXR150000.

The CONTRACTOR must revise or update the SWPPP whenever: 1) there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge or pollutants and that has not been previously addressed in the SWPPP; or 2) results of inspections or investigations by site operators, CITY, TCEQ personnel, or a federal, state or qualified local agency indicate the SWPPP is proving ineffective in sediment control.

The CONTRACTOR shall take all precautions required to prevent soil erosion during the construction. If excessive erosion occurs, the CONTRACTOR shall take immediate measures to prevent further erosion and correct the damages at cost to the CONTRACTOR. The CONTRACTOR shall comply with the

## **SECTION GR - GENERAL REQUIREMENTS**

requirements of the SWPPP and the final TPDES Construction General Permits Regulations.

The CONTRACTOR shall be responsible for the removal of all temporary BMPs, devices and controls used during the construction process to prevent erosion or sedimentation. All temporary BMPs, devices and controls shall be removed, and any disturbed areas stabilized, prior to a notice of termination (NOT) being submitted to the State for the construction project. A copy of the CONTRACTOR'S NOT shall be submitted to the CITY 48 hours prior to submittal of the NOT to the State.

### **8. DRAINAGE**

It shall be the CONTRACTOR'S responsibility to maintain adequate temporary surface drainage during construction so as to prevent flooding and nuisance ponding. Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original conditions of grade and cross section after the work of construction is completed.

The CONTRACTOR'S attention is directed to the Code of Federal regulations (CFR) Section 33, Parts 320 through 330 concerning General Regulation Policy of the Corps of Engineers concerning "waters of the United States". The CONTRACTOR, shall avoid releasing excavated or dredged materials, construct coffer dams, or perform the work in a manner which shall violate the applicable CFR regarding 404 Permits such that an additional or separate 404 Permit is required on this project. The cost for any special improvements, or damages assessed by the Corps of Engineers due to the negligent acts of the CONTRACTOR, may be deducted from payments due to the CONTRACTOR by the OWNER.

### **9. INGRESS AND EGRESS**

The CONTRACTOR shall do his utmost to provide ingress and egress to all existing streets and private driveways at all times. Ingress and egress shall be provided, without fail, to adjacent properties when construction is not in progress.

### **10. TRAFFIC CONTROL**

The CONTRACTOR shall be responsible for providing traffic control during the construction of this project consistent with the provisions set forth in the latest publication of the "Texas Manual on Uniform Traffic Control Devices.

If the CONTRACTOR'S sequence of work is different than shown in the plans then the CONTRACTOR shall prepare an Alternate Traffic Control Plan with details for each segment or stage of construction which requires re-routing or



## **SECTION GR - GENERAL REQUIREMENTS**

different controls of traffic. The Traffic Control Plan shall be drawn at a scale not less than 1"=200' unless approved by the City Engineer and such that it is legible and shall include proposed street closings, detours, barricade placements, and sign placement, including advance warning signs, and pavement markings if necessary. The Contractor shall furnish and erect suitable barricades, signs, and appropriate pavement markings to protect motorists and pedestrians, as set forth in the latest edition of the TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES. The barricades, signs, and pavement markings shall be constructed, placed and adequately maintained as set forth in the Traffic Control Plan or as directed by the engineer or his/her authorized representative. Two-way traffic shall be maintained on all roadways under construction at all times unless the closure is specifically approved and acknowledged in writing by the City Engineer. If it becomes necessary to detour traffic off the existing paved roadway for more than three days or at a high traffic volume location, an asphalt surface shall be constructed and maintained by the contractor throughout the duration of the detour. No direct compensation will be made for the traffic control plan or for furnishing, installing and maintaining barricades, signs, pavement markings, and detours and their subsequent removal. The Alternate Traffic Control Plan will be prepared and submitted to the City Engineer prior to the Pre-construction Conference.

The CONTRACTOR will remove any regulatory sign, instructional sign, street name sign or other sign which is within limits of construction and replace the permanent sign with a temporary sign meeting the requirements of the above-referenced manual and such temporary sign must be installed prior to the removal of the permanent sign. If the temporary sign is not installed correctly or if it does not meet the required specifications, the permanent sign shall be left in place until the temporary sign requirements are met. Permanent signs may be reused during construction provided that the signs meet the above referenced sign requirements. When construction work is completed to the extent that the permanent sign can be reinstalled the CONTRACTOR shall again contact the City of Mansfield. The City shall install new permanent signs, unless specified in the plans, and CONTRACTOR shall leave the temporary sign in place until such reinstallation is completed.

Payment for work and all associated appurtenances required for traffic control, including removal and disposal of removed signs and hardware, shall be considered as incidental to the cost of the project unless specified in the Contract Documents.

### **11. TRENCH AND SUBSURFACE CONSTRUCTION**

The CONTRACTOR'S attention is directed to Federal Laws contained in the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder. The CONTRACTOR is directed to comply with these and all

## **SECTION GR - GENERAL REQUIREMENTS**

other applicable federal, state and local laws. It is the CONTRACTOR'S responsibility to instruct his workmen in the proper safety standards and monitor his activities to insure compliance.

Where required, the CONTRACTOR shall provide a trench safety plan which specifically addresses and identifies the trenches to be made on this project and provides the trenching details to provide a safe work place in accordance with state law and OSHA regulations. The trench safety plan shall bear the seal and signature of a registered professional engineer licensed in the state of this project with experience in preparation of trench safety systems. The plan shall include all soils investigation and test data used by the engineer in developing the plan. The CONTRACTOR shall conduct his trenching operations in accordance with this plan. The CONTRACTOR shall be responsible for daily inspection and report documentation of trench conditions and shall provide copies of reports to the ENGINEER as requested. All costs for implementation of the trench safety plan should be included in the bid item for trench safety.

### **12.INSPECTION**

The CONTRACTOR shall notify the Engineering Department of the City of Mansfield 24 hours prior to beginning construction and shall keep their inspectors informed as to the daily schedule for performance of the work. The inspectors will be available to inspect the work on any working day from 8:00 a.m. to 5:00 p.m. The CONTRACTOR will not perform work that requires inspection at any other times unless he has made prior arrangements with the City of Mansfield.

### **13.TREES AND SHRUBS**

By City of Mansfield Natural Resource Management Ordinance #1220, the CONTRACTOR shall not remove any trees or shrubs unless such removal is called for in the plans or written authorization is received from the OWNER. Trees shall not be pruned without permission from the OWNER. Any trees or other landscape features shall be restored or replaced at the CONTRACTOR'S expense. Trimming or pruning to facilitate the work will be permitted only by experienced workmen in an approved manner. Pruned limbs of one-inch (1") diameter or larger shall be thoroughly treated as soon as possible with a tree wound dressing.

### **14.FILL REQUIREMENTS**

All earth fill should be placed in loose lifts not exceeding twelve inches (12") in uncompacted thickness at a moisture content of optimum or above. Each lift should be compacted to between 95 and 100 percent (95-100%) maximum as determined in the Standard Proctor Compaction Test (ASTM D-698). Each lift should be compacted, tested, and approved by City Inspector before another lift

## **SECTION GR - GENERAL REQUIREMENTS**

is added. The fill should be placed in layers beginning at the low side in part-width layers and increasing the widths as the fill is raised. The layers should be parallel to the finish grade. Proper drainage must be maintained to prevent ponding water.

### **15. GRASS WORK**

All areas disturbed during construction will be seeded or sodded. Any of these areas located within an existing residential neighborhood will be sodded with the same type of grass that was existing before construction began. If questions arise regarding the type of existing grass cover, then Bermuda grass will be used. Contact City of Mansfield for type of grass seed to be used when seeding or hydro mulching. Sodding and fertilizing shall be done in accordance with NCTCOG (4<sup>th</sup> Edition) Item 202.

Seeded and sodded areas shall be fertilized with a 16-8-8 (N-P-K) meeting the requirements of the NCTCOG specifications. Application rate of fertilizer shall be as recommended by manufacturer of fertilizer.

The CONTRACTOR shall maintain sodded and seeded areas until the grass has an established minimum height of two inches over 85 percent (85%) of the disturbed area.

### **16. EXCESS EXCAVATION MATERIALS**

Excess excavation materials from the project shall be disposed offsite by the Contractor. Materials unacceptable as fill material, such as large rocks, trees, asphalt, concrete, drainage facilities and any other construction debris shall be removed from this site and disposed in accordance with City, State and Federal guidelines at an approved location. There will be no separate pay for this work.

### **17. SUBSIDIARY WORK**

Any and all work specifically governed by documentary requirements for the project, such as conditions imposed by the Plans, the General Contract Documents or these Special Documents, in which no specific items for bid has been provided for in the Proposal, shall be considered as a subsidiary item of work, the cost of which shall be included in the price bid in the Proposal, for each bid item. Gravel Drive repair, relocating of mailboxes, removal and replacement of existing fences, and removal of trees are general items of work, which may fall in the category of subsidiary work.

### **18. TECHNICAL SPECIFICATIONS**

## **SECTION GR - GENERAL REQUIREMENTS**

Materials and Method of Construction for all items to be constructed under this contract shall be in conformance with Division 200 through Division 800 of the Standard Specifications for Public Works Construction (4<sup>th</sup> Edition), North Central Texas, published by the NCTCOG unless superceded by City of Mansfield standard details, Material Testing Policies, or if work to be completed is within the State right-of-way it shall be in accordance with TxDOT Specifications, latest edition. The standard specifications are included in the Contract Documents by reference. Copies of these specifications are not supplied to the CONTRACTOR. The CONTRACTOR can obtain copies of these specifications from the North Central Council of Governments, P.O. Box Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

### **19. CLEANUP**

During construction the CONTRACTOR shall at all times keep the jobsite free from waste, debris and rubbish and shall maintain a daily routine of cleanup. All trees, stumps, slashings, brush or other debris to be removed from the site shall be disposed of in such a manner approved by the ENGINEER. Onsite burning of trees and/or trash, etc., will not be permitted. Upon completion of the work as a whole and prior to final acceptance the CONTRACTOR shall clean and remove from the site all surplus and discarded materials, temporary structures and all debris. He shall leave the site in a neat and orderly condition.

### **20. CLARIFICATION OF BID ITEMS**

As listed in the Proposal, construction pay items shall be measured and paid for in accordance with the applicable measurement and payment paragraphs of the City's Standard Specifications, unless modified by these Specifications. As a matter of convenience applicable sections of NCTCOG specifications have been referenced for each Pay Item where applicable. However, where applicable, all portions of the NCTCOG Specifications shall govern this project and shall be referenced as required to properly construct each item of work. Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item.

## ***Section A – GENERAL ITEMS***

### **BID ITEM NO. A-1: Mobilization**

The work under this item shall include the establishment of facilities on the project site and the movement of personnel, construction equipment and supplies to the project site or to the vicinity of the project site in order to enable the Contractor to begin work on the contract. The cost of all bonds and insurance for the project will also be considered part of this specification. Mobilization will be

## SECTION GR - GENERAL REQUIREMENTS

measured as a lump sum item. **This pay item shall encompass mobilization costs for the entire project.**

### **BID ITEM NO. A-2: Right-Of-Way Preparation**

This item governs the preparation of the right-of-way and those areas adjacent to or offsite as may be designated on the plans for construction operations. All work shall be performed per NCTCOG Item 203.3 "General Site Preparation". This work shall include the removal of all obstructions not designated on the plans to remain in place. This shall include, but not be limited to, all sprinkler systems, landscaping, trees, sidewalks, driveways, paved parking lots, above ground and below ground utilities and structures. The maintenance/relocation of street signs, mail boxes shall be considered as part of this item.

Any existing improvement shown to remain, which is damaged or destroyed by these operations, shall be replaced at the Contractor's expense. Measurement and payment shall be on the basis of the price bid per lump sum and shall be full compensation for all labor, material, and equipment deemed necessary to complete this pay item.

### **BID ITEM NO. A-3: Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control**

This item shall consist of control measures and preparation of a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the General Requirements Item 7 - Erosion Control (GR-4) & General Requirements Item 8- Drainage (GR-6), and shall be paid for on a lump sum basis. The location of the control measures, including silt fences, etc. are shown in the plans. The Contractor shall be responsible for maintaining adequate and appropriate control measure items, quantities, locations, and any changes to the SWPPP. **This pay item shall encompass costs for the entire project. Any control measures repairs/replacement/additions, or other measures necessary to maintain compliance with local ordinances, or State or Federal requirements shall be the responsibility of the CONTRACTOR.**

### **BID ITEM NO. A-4: Traffic Control**

Contractor shall ensure that all placement and location of traffic control and safety devices are in accordance with TMUCD requirements.

Payment shall be made on a lump sum (LS) basis for all traffic control measures including, but not limited to, signage, barricades, flagmen, and all other measures necessary to ensure public safety. Traffic control facilities shall remain in place until the completion of the project and all permanent signage is installed. Refer also to the Item 10 Traffic Control (GR-6) of these General Requirements.

## **SECTION GR - GENERAL REQUIREMENTS**

### ***Section B – PAVING ITEMS***

#### **BID ITEM NO. B-1: Remove Existing Concrete Pavement Including Curb:**

Concrete to be removed shall be sawed full-depth through the existing reinforcement along even straight lines as shown on the plans or as established by the Engineer, in accordance with NCTCOG Item 402.3. Once concrete improvements are removed, exposed surfaces shall be roughened to allow adequate bonding of new concrete.

The removal of concrete curb that is integral to any concrete pavement, which is to be removed as part of this work, shall not be paid for directly but shall be considered subsidiary to this pay item. All concrete removal shall be subsidiary to this pay item. Any existing improvements beyond these limits, which are damaged or destroyed by the construction shall be removed and replaced at the Contractor's expense. Locating, relocating and coordinating franchise utilities shall be the responsibility of the Contractor.

Measurement and payment for work performed and materials furnished completed and in place as provided herein shall be made on the basis of the price bid per square yard (SY) in accordance with NCTCOG Item 305.2, and shall be total compensation for furnishing and/or operating all labor, materials, tools, equipment and other incidentals necessary to complete the work.

#### **BID ITEM NO. B-2: Remove Existing Median Nose and Salvage Pavers:**

Concrete to be removed shall be sawed full-depth through the existing reinforcement along even straight lines as shown on the plans or as established by the Engineer, in accordance with NCTCOG Item 402.3. Once concrete improvements are removed, exposed surfaces shall be roughened to allow adequate bonding of new concrete.

The removal of concrete curb that is integral to any concrete pavement, which is to be removed as part of this work, shall not be paid for directly but shall be considered subsidiary to this pay item. All concrete removal shall be subsidiary to this pay item. Any existing improvements beyond these limits, which are damaged or destroyed by the construction shall be removed and replaced at the Contractor's expense. Locating, relocating and coordinating franchise utilities shall be the responsibility of the Contractor.

Measurement and payment for work performed and materials furnished completed and in place as provided herein shall be made on the basis of the price bid per square yard (SY) in accordance with NCTCOG Item 305.2, and shall be total compensation for furnishing and/or operating all labor, materials, tools, equipment and other incidentals necessary to complete the work.

## **SECTION GR - GENERAL REQUIREMENTS**

### **BID ITEM NO. B-3: 10-in Reinforced Concrete Pavement w/ Monolithic Curb:**

Contractor shall construct 10-in Reinforced Concrete Pavement with Monolithic Curb at location as shown in the construction plan. The pavement shall be constructed according to the details as shown in the construction plan and NCTCOG Item 303.

Measurement and payment shall be on the basis of the price bid per square yard (SY) of concrete pavement, complete in place and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

### **BID ITEM NO. B-4: Median Nose:**

Contractor shall construct a Median Nose at location as shown in the construction plan. The median nose shall be constructed according to the details as shown in the construction plan and NCTCOG Item 305.3.

Measurement and payment shall be on the basis of the price bid per square yard (SY) of concrete pavement, complete in place and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

### **BID ITEM NO. B-5: Pavement Markings (Double Solid Line):**

Pavement markings shall be performed in accordance with TxDOT Standard Specifications and the Manufacturer recommendations. This item shall consist of the work, labor, materials, and equipment necessary to install pavement markings as shown on the Plans in accordance with the Texas Department of Transportation Items 666 and 678. All work, labor, materials, and equipment required for surface preparation, installation of pavement markings, and pavement marking sealant shall be subsidiary to each pavement marking bid item placed. Each pavement marking shall be thermoplastic.

Measurement and payment shall be on the basis of the price bid per linear foot (LF) of markings, complete in place and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

### **BID ITEM NO. B-6: Sodding:**

This item consists of providing topsoil and sod to restore disturbed areas to pre-project condition or better. Sod shall be placed in accordance with the NCTCOG Item 202.5 "Sodding".

## **SECTION GR - GENERAL REQUIREMENTS**

Prior to sodding, contractor shall remove all roots, debris, and rocks larger than 1½". Grades shall be uniform, with even cross sections to prevent ponding or uneven grades. Contractor shall be responsible for watering areas of solid block sodding, and rolling the sod to maximize ground contact and appearance. Subsequent watering shall continue until firm rooting of the sod to the ground has occurred as defined by City Inspector.

Payment will be made at the unit price bid per square yard (SY) and shall be full compensation for all labor, materials, equipment, tools, and incidentals necessary to install item complete in place.



## **SECTION W**

### **WAGE RATE SCHEDULE**

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 7, 8, 11, 12, 14, 16, 18, 34, 35, 37, 38, 40, 41, 54, 56, 63**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Karnes	37	Reagan	54
Andrews	54	Duval	41	Kaufman	35	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	38	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	38	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	38	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	16	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Irion	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16
Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35
Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-6-2012

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/6/12	ZONE TX08 1/6/12	ZONE TX11 1/6/12	ZONE TX12 1/6/12	ZONE TX14 1/6/12	ZONE TX16 1/6/12	ZONE TX18 1/6/12	ZONE TX34 1/6/12	ZONE TX35 1/6/12	ZONE TX37 1/6/12	ZONE TX38 1/6/12	ZONE TX40 1/6/12	ZONE TX41 1/6/12	ZONE TX54 1/6/12	ZONE TX56 1/6/12	ZONE TX63 1/6/12
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75		
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88			\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87		\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21		\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.08			\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85		\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38		\$12.80	\$12.79	\$12.98	\$13.32
1318	Concrete Pavement Finishing Machine Operator						\$15.48			\$16.05		\$19.31				\$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											\$16.34				\$11.71	
1333	Concrete Saw Operator									\$14.48	\$17.33					\$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85			\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						\$19.38			\$20.52		\$17.49			\$25.13	\$15.80	
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62			\$15.67			\$14.07	\$13.15	\$13.38			\$14.60	\$13.68	\$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						\$11.67										
1445	Directional Drilling Operator						\$17.24										
1139	Electrician	\$20.96		\$19.87			\$26.35		\$20.27	\$19.80		\$20.92				\$27.11	
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67			\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52			\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	
1150	Flagger	\$9.30	\$9.10	\$8.50		\$8.81	\$9.45	\$8.70		\$10.06	\$9.71	\$9.03		\$9.08	\$9.90	\$10.33	\$8.10
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.25
1160	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	
1360	Foundation Drill Operator, Crawler Mounted									\$17.99						\$17.43	
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05			\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40			\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33			\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.54	\$11.02	\$10.15
1175	Laborer, Utility	\$11.80	\$11.53	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.53	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	

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1187	Mechanic	\$20.14	\$15.47	\$17.47			\$17.10			\$17.68	\$18.94	\$18.58		\$16.61	\$18.46	\$16.96	
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22			\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88			\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01
1393	Motor Grader Operator, Rough	\$16.15	\$14.62	\$15.83		\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12		\$14.47	\$17.39	\$14.23	\$15.53
1413	Off Road Hauler			\$10.08			\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures						\$18.34						\$21.29			\$18.62	
1396	Pavement Marking Machine Operator	\$16.42		\$13.10			\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64			\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	
1384	Reclaimer/Pulverizer Operator	\$12.85					\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53			\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	
1402	Roller Operator, Asphalt	\$10.95		\$11.96			\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44			\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	
1411	Scraper Operator	\$10.61	\$11.07	\$10.85			\$12.27		\$11.12	\$12.96	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11			\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.96							
1515	Spreader Box Operator	\$12.60		\$13.12			\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.28	\$16.03	
1612	Truck Driver Transit-Mix									\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75			\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95			\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50			\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		\$14.02				\$15.97		\$13.74	\$14.84					\$13.78		
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70		\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67	

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.  
The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.