

SPECIFICATIONS for  
LITTLE FLOYD LAKE  
ROCK ARCH RAPIDS

Pelican River Watershed District  
Detroit Lakes, Minnesota  
March 13, 2024

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision, and that I am a duly Licensed Engineer under the laws of the State of Minnesota.



---

Ted D. Rud, P.E.  
License No. 53711

Date: 3/13/2024

Houston Engineering Inc.  
1401 21st Avenue North  
Fargo, ND 58102  
Ph. (701) 237-5065  
HEI Project No. 6498-0003

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for  
Little Floyd Lake Rock Arch Rapids  
Pelican River Watershed District  
Detroit Lakes, Minnesota

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## **PART 1**

# **LEGAL AND PROCEDURAL DOCUMENTS AND BONDS**

ADVERTISEMENT FOR BIDS  
Little Floyd Lake Rock Arch Rapids  
Pelican River Watershed District  
Detroit Lakes, Minnesota

The Pelican River Watershed District will receive sealed proposals for the construction of the **Little Floyd Lake Rock Arch Rapids** project until **1:00 P.M.** on **Thursday, March 28, 2024**, at the Pelican River Watershed District Office located at 211 Holmes St W #201, Detroit Lakes, Minnesota, after which time they will be publicly opened and read. Proposals must be hand-delivered or mailed to the Pelican River Watershed District Office on or before 1:00 PM, Thursday, March 28, 2024. Contract award will be based on the lowest and/or best qualified responsible Bidder, with the ability to complete the work within the specified time frame, or at the discretion of the Owner. Contact person for the planned work is: Ted Rud, Houston Engineering, Inc., phone (701) 499-2079.

The Owner reserves the right to reject any or all Proposals or to waive any informality or technicality in any Proposal in the interest of the Owner. The Owner reserves the right to hold all bids for a period of thirty (30) days after the date of opening thereof.

Before submitting a proposal, bidders shall carefully examine the drawings, read the specifications and the other contract documents, shall visit the site of work, and shall fully inform themselves as to all existing conditions and limitations.

Prevailing Wages apply as detailed in Section 1.6.

**The Contractor is required to fill out and sign the Certification of Compliance of Responsible Contractors located in Section 1.3.08 upon submitting a proposal. If the Certification of Compliance of Responsible Contractors is not signed and the total bid exceeds \$50,000, the proposal will not be considered for award.**

The scope of work consists of furnishing and installing the following approximate quantities:

**Base Project: Little Floyd Lake Rock Arch Rapids**

1	LS	MOBILIZATION
1	LS	CLEARING AND GRUBBING
70	LF	FLOTATION SILT CURTAIN TYPE MOVING WATER
1	LS	MODIFY EXISTING DAM
60	CY	RANDOM RIPRAP CLASS II
120	CY	RANDOM RIPRAP CLASS III
65	LF	ROCK WEIR (36" TO 60" DIAMETER BOULDERS)
4	EA	ROCK BOULDERS (36" TO 60" DIAMETER BOULDERS)
50	CY	TOPSOIL IMPORT
1	LS	HYDROSEEDING
4	EA	BALSAM FIR TREE (2" TO 3" DIAMETER)
3	EA	SUGAR MAPLE TREE (2" TO 3" DIAMETER)
1	EA	BITTERNUT HICKORY TREE (2" TO 3" DIAMETER)
1	EA	CANADA PLUM TREE (2" TO 3" DIAMETER)
1	EA	PRAIRIE CRABAPPLE TREE (2" TO 3" DIAMETER)

And incidental items.

**Alternative 1: Little Floyd Lake Culvert Installation**

20	LF	18” CORRUGATED METAL PIPE
1	EA	18” STEEL FLAP GATE

And incidental items.

The Contract Documents may be examined at the following locations:

Pelican River Watershed District, 211 Holmes St W #201, Detroit Lakes, MN 56501  
Houston Engineering, Inc., 1401 21<sup>st</sup> Avenue North, Fargo, ND

Copies of the plans and specifications may be obtained online at [www.houstoneng.com](http://www.houstoneng.com) for a fee of \$50.00 by going to [www.houstoneng.com](http://www.houstoneng.com) clicking “Bid Info” at the top of the page and searching for Project # 6498-0003. Paper copies of the plans and specifications may be obtained from the office of Houston Engineering, Inc., 1401 21<sup>st</sup> Avenue North, Fargo, ND 58102, upon payment of \$100.00, non-refundable.

Bids must be accompanied by a Certified Check or a Bidder’s Bond made payable to the Pelican River Watershed District, in the amount of 10% of the full amount of the bid as a guaranty that the Bidder, if successful, will enter into Contract and furnish appropriate Contractor’s Bonds in the full amount of the Bid.

This project is made possible in part by grants provided by the Minnesota Department of Natural Resources, through an appropriation by the Minnesota Legislature.

All contract work shall be completed by December 1, 2024 with the exception of Hydroseeding. Hydroseeding shall be completed by June 1, 2025.

The Pelican River Watershed District reserves the right to accept or reject any and all Proposals or to waive any informalities therein.

3/13/24  
Date

/s/ Dennis Kral  
Pelican River Watershed District, President  
Detroit Lakes, Minnesota

## SECTION 1.2

### INFORMATION FOR BIDDERS

1.2.01 PROPOSALS are requested for completion of the Little Floyd Lake Rock Arch Rapids Project, Pelican River Watershed District (PRWD), Detroit Lakes, Minnesota. The project includes the installation of rock riprap and other items in accordance with Drawings, Specifications, and other Contract Documents prepared by Houston Engineering, Inc., 1401 21<sup>st</sup> Avenue North, Fargo, North Dakota.

- a. Qualifications of Bidders: Each bidder must be prepared to submit, within five days of Owner's request, written evidence of previous similar work experience. The Owner may make such investigations, as deemed necessary to determine the ability of each individual bidder. The Pelican River Watershed District reserves the right to reject any bid if evidence submitted by or investigation of such Bidder fails to satisfy Owner that Bidder is qualified to complete work.
- b. Form: Each Proposal shall be made on a form prepared therefore by the Engineer and included as one of the Contract Documents and shall be submitted in a sealed envelope bearing the title of the work and the name of the Bidder.
- c. Modifications: Proposals shall not contain any recapitulations of the work to be done. Alternate proposals will not be considered unless called for. Oral proposals or modifications will not be considered. Where alternate proposals are called for, the Bidder must provide a bid on the specified alternates.
- d. Examination of Contract Documents and Visit to Site: Before submitting a Proposal, Bidders shall carefully examine the Drawings, read the Specifications and the other Contract Documents, shall visit the site of work, and shall fully inform themselves as to all existing conditions and limitations, and shall include in the Proposal a sum to cover the cost of all items included in the Contract Documents. On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of bid.
- e. Delivery of Proposals: Proposals shall be delivered by the time and to the place stipulated in the Advertisement. It is the sole responsibility of the Bidder to see that his Proposal is received in proper time. Any Proposal received after the scheduled closing time for receipt of Proposals shall be returned to the Bidder unopened.
- f. Withdrawal: Any Bidder may withdraw his Proposal, either personally or by telegraphic or written request, at any time prior to the scheduled closing time for receipt of Proposals.

- g. Opening: Proposals will be opened and publicly read aloud at the time and place set forth in the Advertisement.
- h. Award or Rejection: The Contract will be awarded to the lowest and/or best qualified responsible Bidder complying with these instructions and with the Advertisement. The low bid may be determined by the lowest bid submitted as the “Total Base Bid” or “Total Base Bid” + “Total Alternative 1” whichever is to be awarded by the Owner. The Owner reserves the right to reject any or all Proposals or to waive any informality or technicality in any Proposal in the interest of the Owner. The Owner reserves the right to hold all bids for a period of thirty (30) days after the date of opening thereof.

1.2.02 INTERPRETATION OF DOCUMENTS: If any person contemplating submitting a Proposal is in doubt as to the true meaning of any part of the Drawings, Specifications, or other Contract Documents, or finds discrepancies in or omissions from the Drawings or Specifications, he may submit to the Engineer a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the documents will be made only by Addendum duly issued and a copy of the Addendum will be mailed or delivered to each person receiving a set of the Contract Documents. Neither the Owner nor the Engineer will be responsible for any other explanations or interpretations of the Contract Documents.

1.2.03 ADDENDA: Any addenda issued during the time of bidding or forming a part of the Contract Documents loaned to the Bidder for the preparation of his Proposal, shall be covered in the Proposal, and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the Proposal.

1.2.04 BIDDERS INTERESTED IN MORE THAN ONE PROPOSAL: No person, firm or corporation shall be allowed to make, file or to be interested in more than one Proposal for the same work. A person, firm, or corporation who has submitted a sub-proposal to a Bidder, or who has quoted prices on materials to a Bidder, is not hereby disqualified from submitting a sub-proposal or quoting prices to other Bidders.

1.2.05 PROPOSAL GUARANTY: Each Proposal must be accompanied by a certified check or a bid bond acceptable to the Owner, in an amount equal to at least 10% of the Proposal for the “Total Base Bid”, payable without condition to the Treasurer of the PRWD as a guaranty that the Bidder, if awarded the Contract, will promptly execute the Agreement in accordance with the Proposal and the other Contract Documents, and will furnish good and sufficient bond for the faithful performance of the same, and for the payment to all persons supplying labor and material for the work. The Proposal Guaranties of all except the three lowest will be returned promptly after the canvas of Proposals.

1.2.06 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND: The successful Bidders, simultaneously with the execution of the Contract, will be required to furnish a Contractor's Bond in an amount equal to one hundred percent (100%) of the Contract amount; said bond shall be secured from a surety company satisfactory to the Owner.

1.2.07 MATERIALS ESTIMATE: Contractors and suppliers are cautioned to make materials estimates from the Proposal and not from the Advertisement. Quantities listed on the Proposal are in complete detail.

1.2.08 GENERAL CONDITIONS OF THE CONTRACT (latest edition) copyrighted by Engineer's Joint Contract Documents Committee, as bound herewith, are hereby made a part of the Contract Documents.

1.2.09 COMPLETION DATE: All contract work must be completed by December 1, 2024, with the exception of Hydroseeding. Hydroseeding shall be completed by June 1, 2025. However, the contractor shall begin work on the project within 30 days of Notice to Proceed.

1.2.10 LIQUIDATED DAMAGES: If the Contractor fails to complete the work according to the terms of the Contract within the time specified, he shall pay the Owner the sum of \$1,000 per calendar day as liquidated damages.

1.2.11 NOTICE TO PROCEED: The Notice to Proceed shall be issued by the owner as soon as all permitting and other restrictions have been met. Contractor shall commence work within 30 days of a written Notice to Proceed.

1.2.12 DNR: DNR conditions require that no activity affecting the bed of the protected water be conducted between March 15 and June 15 without written approval of the Area Fisheries Manager (See Section 3.1.16).

1.2.13 PREVAILING WAGES: Prevailing wages apply as detailed in Section 1.6.

SECTION 1.3

PROPOSAL

Little Floyd Lake Rock Arch Rapids  
Pelican River Watershed District (PRWD)  
Detroit Lakes, Minnesota

1.3.01 STIPULATED AMOUNT: The Undersigned hereby proposes and agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to complete the Little Floyd Lake Rock Arch Rapids, PRWD, Detroit Lakes, Minnesota, all in accordance with the Drawings, Specifications, and other Contract Documents prepared by Houston Engineering, Inc., 1401 21<sup>st</sup> Avenue North, Fargo, North Dakota, for the prices shown on the attached bid sheets.

1.3.02 KNOWLEDGE OF LOCAL CONDITIONS AND CONTRACT DOCUMENTS: The Undersigned has examined the location of the proposed work, the Drawings, Specifications and other Contract Documents and is familiar with the local conditions at the place where the work is to be performed.

1.3.03 PROPOSAL GUARANTY: The Proposal Guaranty attached, without endorsement, in the sum of not less than ten percent (10%) of the amount of the Proposal for the "Total Base Bid", is furnished to the Owner as a guarantee that the Agreement will be executed and the appropriate Contractor's Bonds furnished within ten (10) days after award of the Contract to the Undersigned, or that the Undersigned will pay to the Owner the difference between the stipulated amount of this Proposal and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by this Proposal, provided that such payment shall be limited to the amount of the Proposal Guaranty.

1.3.04 EXECUTION OF AGREEMENT AND FURNISHING BONDS: Within ten (10) days after being awarded the Contract, the Undersigned agrees to execute the form of Agreement included as one of the Contract Documents, and to furnish a Performance and Payment Bond in an amount equal to 100% of the Contract Amount.

1.3.05 EQUAL OPPORTUNITY: The Contractor in submitting a quote, agrees not to engage in any discriminatory employment practices, shall comply with the Americans with Disability Act of 1990, Minn. Stat. Ch. 363 (the Minnesota Human Rights Act), Minn. Stat. Ch. 177 (prevailing wages for state funded project), Minn. Stat. Ch. 176 (workman's compensation), and Minnesota Statutes, Sections 181.59-60 and all applicable rules and subsequent amendments.

1.3.06 ADDENDA: The Undersigned hereby acknowledges receipt of the following addenda:

<u>Addendum No.</u>	<u>Dated</u>
_____	_____
_____	_____

**BID SHEET**

PELICAN RIVER WATERSHED DISTRICT

DETROIT LAKES, MINNESOTA

**BASE BID - LITTLE FLOYD LAKE ROCK ARCH RAPIDS**

NO.	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
1	MOBILIZATION	LS	1		
2	CLEARING AND GRUBBING	LS	1		
3	FLOTATION SILT CURTIAN TYPE MOVING WATER	LF	70		
4	MODIFY EXISTING DAM	LS	1		
5	RANDOM RIPRAP CLASS II	CY	60		
6	RANDOM RIPRAP CLASS III	CY	120		
7	ROCK WEIR (36" TO 60" DIAMETER BOULDERS)	LF	65		
8	ROCK BOULDERS (36" TO 60" DIAMETER BOULDERS)	EA	4		
9	TOPSOIL IMPORT	CY	50		
10	HYDROSEEDING	LS	1		
11	BALSAM FIR TREE (2" TO 3" DIAMETER)	EA	4		
12	SUGAR MAPLE TREE (2" TO 3" DIAMETER)	EA	3		
13	BITTERNUT HICKORY TREE (2" TO 3" DIAMETER)	EA	1		
14	CANADA PLUM TREE (2" TO 3" DIAMETER)	EA	1		
15	PRAIRIE CRABAPPLE TREE (2" TO 3" DIAMETER)	EA	1		
<b>TOTAL BASE BID</b>					

**ALTERNATIVE 1 - LITTLE FLOYD LAKE CULVERT INSTALLATION**

NO.	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
16	18" CORRUGATED METAL PIPE	LF	20		
17	18" STEEL FLAP GATE	EA	1		
<b>TOTAL ALTERNATIVE 1 BID</b>					

1.3.07 CONTRACT TIME: If awarded the Contract, the Undersigned agrees to complete all contract work by December 1, 2024, except for Hydroseeding. The Undersigned agrees to complete Hydroseeding by June 1, 2025. Work on the project will commence within 30 days of Notice to Proceed.

DNR conditions require that no activity affecting the bed of the protect water be conducted between March 15 and June 15 without written approval of the Area Fisheries Manager (See Section 3.1.16).

1.3.08 CERTIFICATION OF COMPLIANCE OF RESPONSIBLE CONTRACTORS: This provision applies only to projects that are estimated to exceed \$50,000.

A responsible contractor is defined in Minnesota Statutes §16C.285, subdivision 3. Any prime contractor, subcontractor or motor carrier who does not meet the minimum criteria under Minnesota Statutes §16C.285, subdivision 3, clauses (1) to (6), or who fails to verify that it meets those criteria, is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project. A false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor, subcontractor or motor carrier that makes the false statement ineligible to be awarded a construction contract for the project and may result in termination of a contract awarded to a prime contractor, subcontractor or motor operator that makes a false statement. A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers pursuant to subdivision 3, clause 7.

The following is a list of the first-tier subcontractors and motor carriers retained to work on this project and, prior to the execution of a construction contract for this project, I will provide a supplemental verification under oath confirming that I have obtained responsible contractor certificates from each for this project:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By signing this statement, I, \_\_\_\_\_ (typed or printed name), \_\_\_\_\_ (title) certify that I am an owner or officer of the company listed in Section 1.3.12 below and do verify under oath that my company is in compliance with each of the minimum criteria listed in the law.

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
(owner or officer of the company)

1.3.09 NON-COLLUSION AFFIDAVIT

The following Non-Collusion Affidavit shall be executed by the bidder:

Project: Little Floyd Lake Rock Arch Rapids

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn,  
(Name of Person Signing this Affidavit)  
do depose and say:

- (1) that I am the authorized representative of  
\_\_\_\_\_  
(Name of individual, partnership or corporation submitting this proposal)  
and that I have the authority to make this affidavit for and on behalf of said bidder;
- (2) that, in connection with this proposal, the said bidder has not either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding;
- (3) that, to the best of my knowledge and belief, the contents of this proposal have not been communicated by the bidder or by any of his employees or agents to any person who is not an employee or agent of the bidder or of the surety on any bond furnished with the proposal, and will not be communicated to any person who is not an employee or agent of the bidder or of the said surety prior to the official opening of the proposal, and
- (4) that I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: \_\_\_\_\_  
Bidder or his authorized representative

1.3.10 OWNER'S RIGHTS RESERVED: The Undersigned understands that the Owner reserves the right to reject any or all Proposals or to waive any informality or technicality in any Proposal in the interest of the Owner.

1.3.11 Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, this contract is subject the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

1.3.12 THE ABOVE PROPOSAL IS HEREBY RESPECTFULLY SUBMITTED BY:

---

CONTRACTOR

---

BY

TITLE

---

BUSINESS ADDRESS

---

CITY

STATE

ZIP CODE

---

DATE

*NOTE: Ensure that your proposal meets the PROPOSAL GUARANTY (Section 1.3.03), CERTIFICATION OF COMPLIANCE OF RESPONSIBLE CONTRACTORS (Section 1.3.08) and NON-COLLUSION AFFIDAVIT (Section 1.3.09).*

SECTION 1.4

AGREEMENT

1.4.01 THIS AGREEMENT, made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Pelican River Watershed District, Detroit Lakes, Minnesota, hereinafter called the OWNER, and \_\_\_\_\_, hereinafter called the CONTRACTOR,

WITNESSETH, that whereas the OWNER intends to complete the Little Floyd Lake Rock Arch Rapids Project, Pelican River Watershed District, Detroit Lakes, Minnesota, hereinafter called the PROJECT, in accordance with the Drawings, Specifications, and other Contract Documents prepared by Houston Engineering, Inc., 1401 21<sup>st</sup> Avenue North, Fargo, North Dakota.

NOW, THEREFORE, the OWNER and CONTRACTOR for the considerations hereinafter set forth, agree as follows:

1.4.02 THE CONTRACTOR agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all work required for the completion of the Project, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Contract, including the following Addenda: \_\_\_\_\_, and as awarded on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, including items of work: \_\_\_\_\_, as shown in the schedule of prices bid in the attached Proposal.

- a. **Contract Time: All contract work shall be completed by December 1, 2024, with the exception of Hydroseeding. Hydroseeding shall be completed by June 1, 2025.** The Contractor will provide the Owner a proposed schedule to meet the Contract Time upon receipt of Notice to Proceed. DNR conditions require that no activity affecting the bed of the protected water be conducted between March 15 and June 15 without written approval of the Area Fisheries Manager (See Section 3.1.16 of the Special Conditions).
- b. **Subcontractors:** The Contractor agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Owner.
- c. All work required in carrying out this Contract shall be performed in compliance with the laws of the State of Minnesota.
- d. The Contractor shall at all times observe and comply with all Federal, State, and local government laws, regulations, and ordinances which affect the conduct of this work. The Contractors shall be solely responsible for all claims and liabilities

arising from or based upon the violation of such laws, regulations, and ordinances whether by himself/herself or his/her employees.

- e. All construction methods and tools shall comply with commonly accepted standards for safety and health of personnel engaged on construction, including but not limited to Federal Occupational Safety and Health Regulations for Construction; the Division of Environmental Health, the Minnesota Department of Health; the Minnesota Pollution Control Agency; the Department of Natural Resources; the Minnesota Department of Transportation, Division of Highways; the Minnesota Industrial Commission and ordinances of Becker County that apply to this work.

1.4.03 THE OWNER AGREES to pay and the Contractor agrees to accept, in full payment for the performance of this Contract, the Contract amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

in accordance with the provisions of the Contract Documents.

- a. Progress Payments will be made at 30-day intervals, however, 5% of the estimates will be retained until the project is acceptable by the Owner.

1.4.04 CONTRACT DOCUMENTS: The Contract comprises the Contract Documents listed below. In the event that any provision of one Contract Document conflicts with the provision of another Contract Document, the provision in that Contract Document first listed below shall govern, except as otherwise specifically stated:

- a. Agreement (this instrument)
- b. Addenda to Contract Documents
- c. Remaining Legal and Procedural Documents
  - 1. Proposal
  - 2. Information for Bidders
  - 3. Advertisement
- d. Detailed Specification Requirements
- e. Drawings
- f. Special Conditions
- g. Modification of the General Conditions of the Contract
- h. General Conditions of the Contract
- i. Bonds
  - 1. Contractor's Bond
  - 2. Proposal Guaranty

1.4.05 SUCCESSORS AND ASSIGNS: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Owner and the Contractor, respectively, and his partners, successors, assigns and legal representatives. Neither the Owner nor the Contractor

shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

1.4.06 LIQUIDATED DAMAGES: If the Contractor fails to complete the work according to the terms of the Contract within the time specified, he shall pay the Owner the sum of \$500 per calendar day as liquidated damages.

1.4.07 PROMPT PAYMENT TO SUBCONTRACTORS: Contractor must pay any Subcontractor within ten days of the Contractor's receipt of payment for undisputed services provided by the Subcontractor. Failure to do so will require the Contractor to pay interest to Subcontractor per Minnesota Statute 471.425.

1.4.08 IN WITNESS WHEREOF, the parties have made and executed this Agreement, the day and year first above written.

Board of Managers  
Pelican River Watershed District  
Detroit Lakes, Minnesota

---

OWNER

CONTRACTOR

BY: \_\_\_\_\_  
Chairman, Board of Managers  
Pelican River Watershed District

BY: \_\_\_\_\_

---

Secretary, Board of Managers  
Pelican River Watershed District

TITLE

---

WITNESS

SECTION 1.5

CONTRACTOR'S BOND ON CONSTRUCTION

Little Floyd Lake Rock Arch Rapids  
Pelican River Watershed District (PRWD)  
Detroit Lakes, Minnesota

1.5.01 KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_,  
\_\_\_\_\_, Contractor, as Principal, and  
\_\_\_\_\_, as surety, are held and firmly bound unto  
the Pelican River Watershed District, Detroit Lakes, Minnesota, in the amount of  
\_\_\_\_\_  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

For the payment of this, well and truly to be made, we jointly and severally bind ourselves, our  
representatives, and successors firmly by these presents.

The condition of this obligation is such that whereas the Principal has entered into a contract with  
the Pelican River Watershed District, Detroit Lakes, Minnesota, for the construction of the Little  
Floyd Lake Rock Arch Rapids Project, Becker County, Minnesota, which contract is on file in the  
office of the Becker County Auditor and the regularity and validity of which is hereby affirmed;

1.5.02 NOW, THEREFORE, if the principal shall faithfully perform the contract and shall pay as  
they may become due all claims for work done, tools, machinery, skill, materials, insurance  
premiums, equipment, taxes incurred under Section 290.92 or Chapter 297A, and supplies, as may  
be provided for the completion of the contract in accordance with its terms, and shall save the  
Pelican River Watershed District harmless from all costs and charges that may accrue on account of  
the doing of the work specified and shall pay all costs of enforcement of the terms of the bond, if  
action is brought thereon, including reasonable attorney's fees, in any case in which such action is  
successfully maintained, and shall comply with the laws of the State appertaining to such contract,  
then this obligation shall be void but otherwise it shall remain in full force and effect.

SIGNATURES

Dated \_\_\_\_\_, 20\_\_.

Witnesses:

\_\_\_\_\_  
Principal

\_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address of Attorney-in-Fact

(Corporate Seal)

INDIVIDUAL AND CO-PARTNERSHIP ACKNOWLEDGEMENT

STATE OF MINNESOTA    )  
  ) s.s.

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person\_ described in and who executed the foregoing bond, and acknowledged that \_he\_ executed the same as \_\_\_\_\_ free act and deed.

(Notarial Seal)

\_\_\_\_\_

CORPORATE ACKNOWLEDGEMENT FOR CONTRACTOR

STATE OF MINNESOTA    )  
  ) s.s.

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn did say that they are respectively \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, a corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that said instrument was executed in behalf of the corporation by authority of its board of directors; and \_he\_ acknowledged said instrument to be the free act and deed of the corporation.

(Notarial Seal)

\_\_\_\_\_



AFFIX HERE ACKNOWLEDGEMENT OF CORPORATE SURETY

Full Name of Surety Co. \_\_\_\_\_

Home Office Address \_\_\_\_\_

Name of Attorney-in-Fact \_\_\_\_\_

Name of Local Agency \_\_\_\_\_

Address of Local Agency \_\_\_\_\_

If this bond is executed outside the State of Minnesota, it must be countersigned on page 1.5-2 by a Minnesota Resident Agent of the Surety Company.

Name of Agent affixing countersignature \_\_\_\_\_

Address \_\_\_\_\_

# Contractor Affidavit

This Contractor Affidavit must be certified by the Minnesota Department of Revenue before the state of Minnesota or any of its subdivisions can make final payment to contractors. For more detailed information, see the instructions on the back of this form.

Please type or print clearly. This information will be used for returning the completed form.

Company name			Daytime phone	Minnesota tax ID number
Address			Total contract amount	Month/year work began
City	State	ZIP code	\$	Month/year work ended
			Amount still due	
			\$	

Project number	Project location			
Project owner	Address	City	State	ZIP code

Did you have employees work on this project?  Yes  No. If no, who did the work?

Check the box that describes your involvement in the project and fill in all information requested.

**Sole contractor**

**Subcontractor**

Name of contractor who hired you

Address

**Prime contractor**—If you subcontracted out any work on this project, all of your subcontractors must submit their own Contractor Affidavits and have them certified by the Department of Revenue *before* you can submit your Contractor Affidavit. For each subcontractor you had, fill in the information below and attach a copy of each subcontractor’s certified Contractor Affidavit. If you need more space, attach a separate sheet.

Business name	Address	Owner/Officer

I declare that all information I have filled in on this form is true and complete to the best of my knowledge and belief. I authorize the Department of Revenue to disclose pertinent information relating to this project, including sending copies of this form, to the prime contractor if I am a subcontractor, and to any subcontractors if I am a prime contractor, and to the contracting agency.

Contractor’s signature	Title	Date
------------------------	-------	------

**Mail to:** Minnesota Revenue, Mail Station 6610, St. Paul, MN 55146-6610  
**Phone:** 651-282-9999 or 1-800-657-3594

## Certificate of Compliance

Based on records of the Minnesota Department of Revenue, I certify that the contractor who has signed this Contractor Affidavit has fulfilled all the requirements of Minnesota Statutes 290.92 and 270C.66 concerning the withholding of Minnesota income tax from wages paid to employees relating to contract services with the state of Minnesota and/or its subdivisions.

Department of Revenue approval

Date

## Form IC134 Instructions

---

### Contractor Affidavit

No state agency or local unit of government can make final payment to a contractor until the Department of Revenue has certified that the contractor and any subcontractor have fulfilled the requirements of Minnesota withholding tax laws.

If you are a prime contractor, a contractor or a subcontractor who did work on a project for the state of Minnesota or any of its local government subdivisions — such as a county, city or school district — you must submit a Contractor Affidavit to the Department of Revenue to receive a certificate of compliance.

### Use of Information

The Department of Revenue needs **all** the requested information to determine if you have met the state income tax withholding requirements. If all required information is not provided, Form IC134 will be returned to you for completion.

All information on this Contractor Affidavit is private by state law. It cannot be given to others without your permission, except to the Internal Revenue Service, other states that guarantee the same privacy and certain government agencies as provided by law.

### Minnesota Tax ID Number

You must have a Minnesota tax ID number if you have employees who work in Minnesota. You must enter your Minnesota tax ID number on Form IC134.

If you don't have a Minnesota tax ID number, apply online at [www.revenue.state.mn.us](http://www.revenue.state.mn.us) or by calling our Business Registration Office at 651-282-5225 or 1-800-657-3605.

If you have no employees and did all the work yourself, you do not need a Minnesota tax ID number. Instead, enter your Social Security number in the space for Minnesota tax ID number and explain who did the work.

### Submit Contractor Affidavit

Form IC134 cannot be processed by the Department of Revenue until you finish the work. If you submit the form before the project is completed, it will be returned to you unprocessed.

If any withholding payments are due to the state, Minnesota law requires certified payments before we approve your Form IC134.

If you are a subcontractor or sole contractor, submit the form when you have completed your part of the project.

If you are a prime contractor, submit the form when the entire project is completed and you have received certified Contractor Affidavits from all of your subcontractors.

### If you're a prime contractor and a subcontractor on the same project

If you were hired as a subcontractor to do work on a project, and you subcontracted all or a part of your portion of the project to another contractor, you are a prime contractor as well. Complete both the subcontractor and prime contractor areas on a single Form IC134.

You may submit your Contractor Affidavit either electronically **or** by mail. This affidavit must be certified and returned before the state or any of its subdivisions can make final payment for your work.

**For an immediate response:** Complete and submit your Contractor Affidavit electronically. Go to [www.revenue.state.mn.us](http://www.revenue.state.mn.us) and choose **Withholding Tax**. Under the File and Pay tab, click on Contractor Affidavit Information for Government Projects.

**You may complete and mail Form IC134 to:** Minnesota Revenue, Mail Station 6610, St. Paul, MN, 55146-6610. If you have fulfilled the requirements of Minnesota withholding tax laws, the department will sign your Form IC134 and return it to you.

To receive your final payment, submit the certified Contractor Affidavit to the government unit for which the work was done. If you are a subcontractor, submit the certified Contractor Affidavit to your prime contractor to receive your final payment.

### Information and Assistance

Additional forms and information, including fact sheets and frequently asked questions, are available on our website.

Website: [www.revenue.state.mn.us](http://www.revenue.state.mn.us)

Email: [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us)

Phone: 651-282-9999 or 1-800-657-3594

This information is available in alternate formats.

## State of Minnesota – E-Verify Subcontractor Certification

Effective July 21, 2011, state law mandates that contracts “for services valued in excess of \$50,000 must require certification from the vendor and any subcontractors that, as of the date services on behalf of the state of Minnesota will be performed, the vendor and all subcontractors have implemented or are in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the state of Minnesota.”

E-Verify is a federal system established by the Department of Homeland Security to determine the immigration and work-eligibility status of prospective employees.

Detailed E-Verify program information for employers can be found at <http://www.dhs.gov/e-verify>.

By signing relevant solicitation responses and contracts, a vendor is certifying compliance with the statutory requirement with respect to its own business.

Additionally, prior to the initiation of services, a vendor must obtain written certification from all subcontractors who will participate in the performance of the contract. The certification below has been prepared for prime contractors to use for this purpose. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

### **CERTIFICATION (In accordance with Minn. Stat. §16C.075)**

By the date of the performance of services, the company shown below will have implemented or will be in the process of implementing the E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

**I certify that the company shown below is in compliance with the above statement and that I am authorized to sign on its behalf.**

Name of Company: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

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

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

Telephone Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

The state reserves the right to determine how it will respond to any instances of non-compliance or false certification of compliance. Potential state actions include, but are not limited to cancellation of the contract and/or suspending or debarring the contract vendor from state purchasing.

For assistance with this form, please contact:

## SECTION 1.6

### PREVAILING WAGES

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

Any contractor or subcontractor performing work by contract in which state funds in whole or in part are involved must adhere to Minnesota prevailing wage laws. The certification in effect at the time the project is advertised (bids are asked for) applies for the duration of the project.

Authority to investigate complaints of prevailing wage violations has been assigned to two state agencies. The Minnesota Department of Transportation (Mn/DOT) is the primary enforcing agency for all projects let out to bid for highway-related construction. All other investigations are conducted by the Minnesota Department of Labor and Industry (DLI) or individual contract officers representing project owners.

DLI is authorized to review payroll documents to determine compliance with prevailing wage rate provisions for all state construction projects, including highway construction. DLI administers prevailing wage laws through the investigation of noncompliance complaints.

END OF SECTION

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED CONSTRUCTION PROJECTS



THIS NOTICE MUST BE POSTED ON THE JOBSITE IN A CONSPICUOUS PLACE

**Construction Type: Highway and Heavy**

**Region Number: 04**

Counties within region:

- BECKER-03
- BIG STONE-06
- CLAY-14
- DOUGLAS-21
- GRANT-26
- MAHNOMEN-43
- OTTERTAIL-56
- POPE-61
- STEVENS-75
- SWIFT-76
- TRAVERSE-78
- WILKIN-84

Effective: 2023-11-20

This project is covered by Minnesota prevailing wage statutes. Wage rates listed below are the minimum hourly rates to be paid on this project.

All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be paid at a rate of one and one half (1 1/2) times the basic hourly rate. *Note: Overtime pay after eight (8) hours on the project must be paid even if the worker does not exceed forty (40) hours in the work week.*

Violations on MnDOT highways and road projects should be reported to:

Department of Transportation  
Office of Construction  
Transportation Building MS650  
John Ireland Blvd  
St. Paul, MN 55155  
(651) 366-4209

All other prevailing wage violations and questions should be sent to:

Department of Labor and Industry  
Prevailing Wage Section  
443 Lafayette Road N  
St Paul, MN 55155  
(651) 284-5091  
[DLI.PrevWage@state.mn.us](mailto:DLI.PrevWage@state.mn.us)

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
<b>LABORERS (101 - 112) (SPECIAL CRAFTS 701 - 730)</b>					
101	LABORER, COMMON (GENERAL LABOR WORK)	2023-11-20	29.45	21.79	51.24
		2024-05-01	32.23	22.49	54.72

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
102	LABORER, SKILLED (ASSISTING SKILLED CRAFT JOURNEYMAN)	2023-11-20	29.45	21.79	51.24
		2024-05-01	32.23	22.49	54.72
103	LABORER, LANDSCAPING (GARDENER, SOD LAYER AND NURSERY OPERATOR)	2023-11-20	22.00	0.00	22.00
104	FLAG PERSON	2023-11-20	24.04	18.05	42.09
105	WATCH PERSON	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLLPREVWAGE@STATE.MN.US">DLLPREVWAGE@STATE.MN.US</a>			
106	BLASTER	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLLPREVWAGE@STATE.MN.US">DLLPREVWAGE@STATE.MN.US</a>			
107	PIPELAYER (WATER, SEWER AND GAS)	2023-11-20	32.95	21.79	54.74
		2024-05-01	35.73	22.49	58.22
108	TUNNEL MINER	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLLPREVWAGE@STATE.MN.US">DLLPREVWAGE@STATE.MN.US</a>			
109	UNDERGROUND AND OPEN DITCH LABORER (EIGHT FEET BELOW STARTING GRADE LEVEL)	2023-11-20	30.95	21.79	52.74
		2024-05-01	33.73	22.49	56.22
110	SURVEY FIELD TECHNICIAN (OPERATE TOTAL STATION, GPS RECEIVER, LEVEL, ROD OR RANGE POLES, STEEL TAPE MEASUREMENT; MARK AND DRIVE STAKES; HAND OR POWER DIGGING FOR AND IDENTIFICATION OF MARKERS OR MONUMENTS; PERFORM AND CHECK CALCULATIONS; REVIEW AND UNDERSTAND CONSTRUCTION PLANS AND LAND SURVEY MATERIALS). THIS CLASSIFICATION DOES NOT APPLY TO THE WORK PERFORMED ON A PREVAILING WAGE PROJECT BY A LAND SURVEYOR WHO IS LICENSED PURSUANT TO MINNESOTA STATUTES, SECTIONS 326.02 TO 326.15.	2023-11-20	21.39	14.90	36.29
111	TRAFFIC CONTROL PERSON (TEMPORARY SIGNAGE)	2023-11-20	23.04	17.10	40.14

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
112	2023-11-20	19.95	8.84	28.79
QUALITY CONTROL TESTER (FIELD AND COVERED OFF-SITE FACILITIES; TESTING OF AGGREGATE, ASPHALT, AND CONCRETE MATERIALS); LIMITED TO MN DOT HIGHWAY AND HEAVY CONSTRUCTION PROJECTS WHERE THE MN DOT HAS RETAINED QUALITY ASSURANCE PROFESSIONALS TO REVIEW AND INTERPRET THE RESULTS OF QUALITY CONTROL TESTERS. SERVICES PROVIDED BY THE CONTRACTOR.				
<b>SPECIAL EQUIPMENT (201 - 204)</b>				
201	2023-11-20	28.00	0.00	28.00
ARTICULATED HAULER				
202	2023-11-20	30.21	22.55	52.76
BOOM TRUCK				
203	2023-11-20	26.00	0.00	26.00
LANDSCAPING EQUIPMENT, INCLUDES HYDRO SEEDER OR MULCHER, SOD ROLLER, FARM TRACTOR WITH ATTACHMENT SPECIFICALLY SEEDING, SODDING, OR PLANT, AND TWO-FRAMED FORKLIFT (EXCLUDING FRONT, POSIT-TRACK, AND SKID STEER LOADERS), NO EARTHWORK OR GRADING FOR ELEVATIONS				
204	2023-11-20	51.13	3.48	54.61
OFF-ROAD TRUCK				
205	2023-11-20	24.16	22.85	47.01
PAVEMENT MARKING OR MARKING REMOVAL EQUIPMENT (ONE OR TWO PERSON OPERATORS); SELF-PROPELLED TRUCK OR TRAILER MOUNTED UNITS.				
<b>HIGHWAY/HEAVY POWER EQUIPMENT OPERATOR</b>				
<b>GROUP 2</b>	2023-11-20	33.23	25.00	58.23
	2024-04-29	34.94	26.40	61.34
302	HELICOPTER PILOT (HIGHWAY AND HEAVY ONLY)			
303	CONCRETE PUMP (HIGHWAY AND HEAVY ONLY)			
304	ALL CRANES WITH OVER 135-FOOT BOOM, EXCLUDING JIB (HIGHWAY AND HEAVY ONLY)			
305				

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
306				
307				
308				
<b>GROUP 3</b>	2023-11-20	31.47	23.45	54.92
309				
310				
311				
312				
313				
314				
315				
316				
317				
318				
319				
320				
321				
322				
<b>GROUP 4</b>	2023-11-20	31.16	23.45	54.61
323				
324				
325				
326				
327				
328				
329				
330				
331				
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333				
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335				

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
336				
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365				
366				
367				
368				
<b>GROUP 5</b>	2023-11-20	27.70	21.40	49.10
369				
370				

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
371				
372				
373				
374				
375				
376				
377				
378				
379				
380				
381				
382				
383				
384				
385				
<b>GROUP 6</b>	2023-11-20	29.53	25.00	54.53
	2024-04-29	31.06	26.40	57.46
387				
388				
389				
390				
391				
392				
393				
394				
395				
396				
397				
<b>TRUCK DRIVERS</b>				
<b>GROUP 1</b>	2023-11-20	24.70	13.60	38.30
601				
602				
603				
<b>GROUP 2</b>	2023-11-20	33.43	20.30	53.73

LABOR CODE AND CLASS	EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE	
604					
	FOUR OR MORE AXLE UNIT, STRAIGHT BODY TRUCK				
<b>GROUP 3</b>	2023-11-20	29.27	22.70	51.97	
	2024-05-01	30.87	23.70	54.57	
605					
	BITUMINOUS DISTRIBUTOR DRIVER				
606					
	BITUMINOUS DISTRIBUTOR (ONE PERSON OPERATION)				
607					
	THREE AXLE UNITS				
<b>GROUP 4</b>	2023-11-20	29.27	22.70	51.97	
	2024-05-01	30.87	23.70	54.57	
608					
	BITUMINOUS DISTRIBUTOR SPRAY OPERATOR (REAR AND OILER)				
609					
	DUMP PERSON				
610					
	GREASER				
611					
	PILOT CAR DRIVER				
612					
	RUBBER-TIRED, SELF-PROPELLED PACKER UNDER 8 TONS				
613					
	TWO AXLE UNIT				
614					
	SLURRY OPERATOR				
615					
	TANK TRUCK HELPER (GAS, OIL, ROAD OIL, AND WATER)				
616					
	TRACTOR OPERATOR, UNDER 50 H.P.				
<b>SPECIAL CRAFTS</b>					
701					
	HEATING AND FROST INSULATORS	2023-11-20	17.50	0.00	17.50
702					
	BOILERMAKERS	2023-11-20	44.37	30.55	74.92
		2024-01-01	46.00	31.93	77.93
703					
	BRICKLAYERS	2023-11-20	35.88	23.20	59.08
704					
	CARPENTERS	2023-11-20	34.86	24.96	59.82
705					
	CARPET LAYERS (LINOLEUM)	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLI.PREVVAGE@STATE.MN.US">DLI.PREVVAGE@STATE.MN.US</a>			
706					
	CEMENT MASONS	2023-11-20	40.35	21.63	61.98
707					
	ELECTRICIANS	2023-11-20	43.67	27.49	71.16
711					
	GROUND PERSON	2023-11-20	40.14	0.00	40.14
712					
	IRONWORKERS	2023-11-20	43.00	34.11	77.11

LABOR CODE AND CLASS		EFFECT DATE	BASIC RATE	FRINGE RATE	TOTAL RATE
		2024-04-28	46.00	34.11	80.11
713	LINEMAN	2023-11-20	36.26	6.93	43.19
714	MILLWRIGHT	2023-11-20	41.77	27.55	69.32
715	PAINTERS (INCLUDING HAND BRUSHED, HAND SPRAYED, AND THE TAPING OF PAVEMENT MARKINGS)	2023-11-20	50.00	0.00	50.00
716	PILEDRIIVER (INCLUDING VIBRATORY DRIVER OR EXTRACTOR FOR PILING AND SHEETING OPERATIONS)	2023-11-20	43.53	27.91	71.44
		2024-05-01	47.03	27.91	74.94
717	PIPEFITTERS . STEAMFITTERS	2023-11-20	44.71	20.04	64.75
		2024-05-06	47.91	20.04	67.95
719	PLUMBERS	2023-11-20	44.78	23.04	67.82
721	SHEET METAL WORKERS	2023-11-20	27.00	3.33	30.33
723	TERRAZZO WORKERS	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
724	TILE SETTERS	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
725	TILE FINISHERS	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
727	WIRING SYSTEM TECHNICIAN	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
728	WIRING SYSTEMS INSTALLER	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
729	ASBESTOS ABATEMENT WORKER	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			
730	SIGN ERECTOR	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLL.PRE VWAGE@STATE.MN.US">DLL.PRE VWAGE@STATE.MN.US</a>			

## **PART 2**

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## 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 document prepared by Contractor, in a form acceptable to Engineer, to request 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; 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; 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.
- 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.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. 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), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations 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 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. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *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.
24. *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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *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.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *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.
30. *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.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *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.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *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.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *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.
38. *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 or areas furnished by Owner which are designated for the use of Contractor.
39. *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.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *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 of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *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.
50. *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 Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* 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:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. 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 Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. 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 Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 signed 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 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 *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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. 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.

### 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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer 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 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 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 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 in writing 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.

- 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 notify Owner and Contractor in writing 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 versions, 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 precludes 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 30th 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 60th day after the day of Bid opening or the 30th 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 may 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 must 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 will 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 Contract Price or 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. Such an adjustment will 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 third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price 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. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses 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.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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 7.13, 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 in a court of competent jurisdiction; 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 will 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 of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* 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 Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* 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;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. 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:
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;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  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 whether it is necessary for Owner to obtain 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; 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, 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 subject to the provisions of Paragraphs 4.05.D and 4.05.E.
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;
  - 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 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, then any such adjustment will 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, 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.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. 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 on the Drawings, or was not shown or indicated on the Drawings 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), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; 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
  4. 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, 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. 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;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. 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, then any such adjustment will 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, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; 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 on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. 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;
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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, 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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- 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, 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.I obligates 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 obligates 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 Contractor's obligations under the Contract. These bonds must 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 terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. 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.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 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. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. 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, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. 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.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain 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.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, 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 and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, 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;
  - 4. apply with respect to the performance of the Work, whether such performance is 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; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other 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 Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- 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 advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer 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.

1. 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, risks, 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 individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.
  2. None of the above waivers extends 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. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, 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, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. 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 all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 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 6.04 shall maintain such proceeds in a segregated account, and 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, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *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 maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will 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.

#### 7.04 *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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, 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 equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) 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) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item 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 will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material 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 equipment or material under the circumstances described below. To the extent possible such requests must 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 equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.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 equipment or material that Contractor seeks to furnish or use. The application:
  - a. will 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 the item specified; and
    - 3) be suited to the same use as the item 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 the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will 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 will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, 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 or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *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 an 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 will be disclosed 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.

#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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.

#### 7.10 *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.

#### 7.11 *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. 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written 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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *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.

### 7.13 *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.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will 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.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) 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
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must 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.C.
  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.C.
  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. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of 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 will 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 or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 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, will 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 or Sample will 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.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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 Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**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 is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
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. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. 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 will 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 losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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 will 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.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **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 third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 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 for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. 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 will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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 or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- 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.
  - 1. 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 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 8.03.B.
  - 2. 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 Contractor.
- C. 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 will 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 (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 10.07. 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 *Resident 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 the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *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.

10.06 *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.

10.07 *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, will 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 Contractor under 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 10.07 also apply to the Resident Project Representative, if any.

10.08 *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 of which Engineer has been informed.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that 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, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in 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 11.05, (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 that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. 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 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. 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.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *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. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates 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.

#### 11.06 *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.C.2.

#### 11.07 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must 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);
  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 11.07.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 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will 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 will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 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 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.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 5 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 will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will 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 of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

#### B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* 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.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must 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.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must 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.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *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 are subject 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;
  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; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- 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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will 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 will 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 will 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 will 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 will 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 will 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 will be incorporated in a Change Order or other written document 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. When needed 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 will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will 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 in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, 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, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will 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 or retained for services specifically related to the Work.
  5. Other costs consisting of 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, 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.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
  - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
  - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed 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 builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will 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 does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general 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. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. 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.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. 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*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 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 for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**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 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 with such procedures and programs 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 will 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 will 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 will 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 written 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 will 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 additional 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, 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 will 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 defective Work as required by Engineer, then Owner may, after 7 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 for 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.
  - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) 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.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. 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;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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 based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other 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; or
  - l. Other items entitle 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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 7 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 will 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 7 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 15.03.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 6.04 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 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must 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 duly pending Change Proposals and Claims; 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 Final Application and Recommendation of Payment:* 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 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will 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. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *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 and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- 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 as a Claim, 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 Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. 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.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to 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 directly attributable to any such suspension. Any Change Proposal seeking such adjustments must 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) 10 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) written 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 7 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 will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 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 for any loss of anticipated profits or revenue, post-termination overhead costs, 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 7 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, 7 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, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise 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;
  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 requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **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 will not constitute a waiver of that provision, nor will 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 of the Contract or 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 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

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

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; and Evidence of Insurance*

SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

- B. *Evidence of Contractor's Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

### 2.02 *Copies of Documents*

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor one printed copy of the Contract Documents (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

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

SC-4.01 Amend the last sentence of Paragraph 4.01.A to read as follows:

In no event will the Contract Times commence to run later than the 90<sup>th</sup> day after the day of Bid opening or the 30<sup>th</sup> day after the Effective Date of the Contract, whichever date is earlier.

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

SC-4.05 Add the following language at the end of Paragraph 4.05.C.4:

5. *Weather-Related Delays*
- a. Normally experienced inclement weather is not considered as abnormal weather or an act of God. Extensions in Contract Time for abnormal weather shall be judged on the National Oceanic and Atmospheric Administration (NOAA) Local Climatological Data for the area in which the project is being constructed. The calculated statistical

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Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions.

EJCDC® C-800, Supplementary Conditions of the Construction Contract.

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upper quartile (75th percentile) of the precipitation of record shall be considered normal weather. Contractor shall be responsible for obtaining, preparing and presenting the appropriate NOAA weather data to support and substantiate Contractor's request for an Extension in Contract Time for abnormal weather.

**ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.02 *Use of Site and Other Areas*

SC 5.02 Delete Paragraph 5.02.A.2 in its entirety and insert the following in its place:

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 7.13, 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 in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' officers, directors, members, partners, employees, agents, consultants, and subcontractors officers, directors, members, partners, employees, agents, consultants and subcontractors, 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.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.A.3:

4. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
No such reports are known to the Owner		

5. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings are known to the Owner		

SC 5.03 Delete Paragraph 5.03.B in its entirety and insert the following in its place:

- B. *Underground Facilities*: Contractor is responsible for verifying the existence and location of any Underground Facilities within the area affected by the Work. Underground Facilities previously located by Owner are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

5.05 *Underground Facilities*

SC 5.05 Delete Paragraph 5.05.A.1 in its entirety and insert the following in its place:

- 1. verifying the existence and location of any Underground Facilities, and reviewing and checking all information and data regarding existing Underground Facilities at the Site;

5.06 *Hazardous Environmental Conditions at Site*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

- 4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
No such reports are known to Owner.		

- 5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings are known to Owner.		

SC 5.06 Delete Paragraph 5.06.I., J., and K. in their entirety and insert the following in their place:

- I. Contractor shall defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' 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 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.I obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. 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

### 6.02 Insurance—General Provisions

- SC-6.02 Delete Paragraphs 6.02.A through 6.02.N in their entirety and insert the following in their place:
- A. 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 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. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
  - D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
  - E. Failure of Owner to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of Contractor’s obligation to obtain and maintain such insurance.
  - F. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. 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.
  - G. Contractor shall require:
    - 1. Subcontractors to purchase and maintain the same insurance required of Contractor under the Contract; and
    - 2. Suppliers to purchase and maintain the same insurance required of Contractor under the Contract.

- H. If Contractor does not purchase or maintain the insurance required of Contractor by the Contract, Contractor shall notify Owner 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.
- I. If Contractor has failed to obtain and maintain required insurance, Contractor’s entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner’s termination rights under Article 16.
- J. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner’s interests at the expense of Contractor, and the Contract Price will be adjusted accordingly.
- K. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor’s interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- L. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor’s liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- M. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 30 days prior written notice has been given to the purchasing policyholder, Owner, and all additional insured parties.

6.03 *Contractor’s Insurance*

SC-6.03 Delete Paragraph 6.03.C in its entirety and insert the following in its place:

- C. Contractor will obtain the following insurance at not less than the following amounts or greater where required by Laws and Regulations:

- 1. Workers’ Compensation, and related coverages:

State: Minnesota	Statutory
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- 2. Contractor’s Commercial General Liability:

General Aggregate	\$	2,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$	1,000,000

- 3. Automobile Liability:

Bodily Injury:		
Each person	\$	1,000,000
Each accident	\$	1,000,000

Property Damage:		
Each accident	\$	1,000,000
Combined Single	\$	2,000,000

4. Contractor’s Pollution Liability:

Contractor is not required to provide Contractor’s Pollution Liability insurance under this Contract

D. Contractor’s insurance must meet the following additional requirements:

1. Any deductible or self-insured retention amount or other similar obligation under the policies will be Contractor’s sole responsibility.
2. The policies must be from insurers rated “A-” or better by A.M. Best Company, Inc.
3. All policies will name Contractor as the insured and the following as additional insured parties.
  - a. The Pelican River Watershed District and its Board of Managers, its officers and employees.
  - b. The State of Minnesota, its officers and employees.
  - c. Houston Engineering, Inc., its agents, officers, employees, and subconsultants.
4. Contractor’s policies will be primary and noncontributory regarding any other insurance available to Owner, Engineer, and the State of Minnesota as additional insured parties.
5. Contractor’s policies must each contain a “waiver of subrogation” that waives any right to recovery any of Contractor’s insurance companies might have against Owner, Engineer, and the State of Minnesota.
6. Contractor’s policies must each contain a provision that the policies and any endorsements may not be cancelled or modified without 30 days prior written notice to Owner, Engineer, and the State of Minnesota.
7. Contractor’s policies, either in the policies or in endorsements, must each contain a provision that Contractor’s insolvency or bankruptcy will not release the insurer from payment under the policy, even when Contractor’s insolvency or bankruptcy prevents Contractor’s from meeting the retention limit under the policy.
8. Contractor’s policies, either in policies or in endorsements, must contain cross liability/severability of interests, to ensure that Owner, Engineer, and the State of Minnesota are covered as if they were all separately covered.
9. Contractor’s policies, either in the policies or in endorsements, must contain a provision that the legal defense provided to Owner, Engineer, and the State of Minnesota must be free of any conflicts of interest, even if retention of separate legal counsel is necessary.
10. Contractor’s policies, either in the policies or in endorsements, must contain a provision that any attorney who represents the State of Minnesota must first qualify as and be

appointed by the Minnesota Attorney General as a Special Assistant Attorney General as required under Minnesota Statutes.

11. Contractor's policies, will not limit in any way Contractor's duties to defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives.
- E. Before commencing the construction services under this Agreement, Contractor will deliver to Owner copies of the insurance policies and endorsements required under this Agreement, and will otherwise provide all requisite evidence that the insurance required under this Agreement is in full force and effect. Contractor's duties to release, defend, indemnify, protect and hold harmless Owner, Engineer, and the State of Minnesota and those parties' officers, agents, representatives, employees, or contractors include anything in excess of the minimum insurance requirements described above. Owner's receipt of any certificates, policies, or endorsements required under this Agreement will not limit Contractor's duties and obligations to maintain the insurance required under this Agreement. Contractor will ensure that any and all of Contractor's Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work purchase and maintain the same insurance with the same conditions and terms required of Contractor under the Contract Documents.

#### 6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete Paragraphs 6.04.B through 6.04.E in their entirety.

#### 6.05 *Property Losses; Subrogation*

- SC-6.05 Delete Paragraphs 6.05.A through 6.05.D in their entirety and insert the following in their place:
- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Owner, Engineer, or the State of Minnesota, or those parties' officers, directors, members, partners, employees, agents, consultants, or subcontractors.
  - B. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
  - C. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Engineer, the State of Minnesota, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, and those parties' 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

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

### 7.03 *Labor; Working Hours*

SC-7.03 Delete Paragraph 7.03.C in its entirety and insert the following in its place:

- C. 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 state in the Contract Documents, all Work at the Site must be performed during regular working hours, Monday through Saturday. Contractor will not perform Work outside regular working hours, on Sundays, or on legal holidays without Owner's written consent given after Contractor has provided written notice to Engineer a minimum of five days in advance.

SC-7.03 Add the following new paragraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be 7 AM to 7 PM.
  2. Owner's legal holidays are in accordance with Minnesota Statute 645.44.
- D. Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 7.07 *Concerning Subcontractors and Suppliers*

SC-7.07 Add the following new paragraphs immediately after Paragraph 7.07.M:

- N. Contractor shall be fully responsible to Owner, Engineer, and the State of Minnesota 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.
- 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.

#### 7.08 *Patent Fees and Royalties*

SC-7.08 Delete Paragraphs 7.08.B. and C. in their entirety and insert the following in their place:

- B. Contractor shall defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' 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 not specified in the Contract Documents.

## 7.09 *Permits*

SC-7.09 Amend the last sentence of Paragraph 7.09.A to read as follows:

Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work.

## 7.11 *Laws and Regulations*

SC-7.11 Delete Paragraph 7.11.B in its entirety and insert the following in its place:

- 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 defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

## 7.18 *Indemnification*

SC-7.18 Delete Paragraph 7.18.A in its entirety and insert the following in its place:

- A. Contractor shall defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' officers, employees, agents, consultants, subcontractors, and representatives (collectively, the "Indemnified Parties"), from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and fees (including all fees and charges of attorneys, engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to any 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, and including all costs, expenses, and fees incurred by any of the Indemnified Parties in establishing and litigating the existence, scope, or any other matters relating to Contractor's obligations to defend, indemnify, and hold harmless. Contractor's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. Contractor's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the Contract Documents, and anything in excess of any of Contractor's insurance policy limits. Contractor's obligations include all costs, expenses, and fees incurred by any of the Indemnified Parties in establishing and litigating the existence, scope, or any other matters relating to Contractor's obligations to defend, indemnify, and hold harmless.

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

### 8.03 *Legal Relationships*

SC 8.03 Delete Paragraph 8.03.C in its entirety and insert the following in its place:

- C. 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, Engineer, or the State of Minnesota, or any of those parties' officers, employees, agents, consultants, subcontractors, and representatives, 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) defend, indemnify, and hold harmless Owner, Engineer, and the State of Minnesota, and those parties' 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 10—ENGINEER'S STATUS DURING CONSTRUCTION**

### **10.03 Resident Project Representative**

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  4. *Liaison*
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

- c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work; Defective Work*
  - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections and Tests*
  - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
10. *Records*
  - a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. *Payment Requests: Review Applications for Payment with Contractor.*

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion*

- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
- b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

D. The RPR will not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

## **ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

### *13.01 Cost of the Work*

SC-13.01 Add the following language at the end of Paragraph 13.01.B.5.c.(2):

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current rental rates established by the Commissioner’s Equipment Rental Schedule.

SC-13.01 Add the following new paragraph immediately after Paragraph 13.01.C.2:

- a. For purposes of this paragraph, “small tools and hand tools” means any tool or equipment whose current price if it were purchased new at retail would be less than \$500.

### *13.03 Unit Price Work*

SC-13.03 Delete Paragraph 13.03.D and E in their entirety and insert the following in their place:

- D. Engineer will determine the quantities and classifications for payment of Unit Price Work performed by Contractor after original submittal of the Contractor’s Application for Payment with the Contractor’s quantities and classifications of Unit Price Work. The basis of quantities shall only be made according to the Measurement and Payment sections of individual Specifications provided within the Contract Documents or the referenced Specifications, if any. Engineer will render a written decision (by issuing a written recommendation regarding Contractor’s Application for Payment). Engineer’s written decision 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 Paragraph 13.03.E.1.

#### *E. Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. Within 30 days of Engineer’s written decision under Paragraph 13.03.D., Contractor may submit a Change Proposal in accordance with Paragraph 11.07, or Owner may submit a Claim in accordance with Article 12, seeking an adjustment in the Contract Price. Additionally, the unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
    - 1) The extended price of a particular item of Unit Price Work amounts to 10 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of

Unit Price Work actually furnished or performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and

- 2) Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  - b. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  - c. Adjusted unit prices will apply to all units of that item.

## **ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

### **15.06 Final Payment**

SC-15.06 Delete Paragraph 15.06.A.3 in its entirety and insert the following in its place:

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 defend, indemnify, and hold harmless Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

## **PART 3**

# **SPECIAL CONDITIONS**

SECTION 3.1

SPECIAL CONDITIONS

3.1.01 DEFINITION OF TERMS

Whenever the following terms, or pronouns in place of them, shall occur in these specifications, the intent and meaning shall be interpreted as follows:

<u>County</u>	County of Becker, Minnesota
<u>Watershed District</u>	Pelican River Watershed District Detroit Lakes, Minnesota
<u>Board</u>	Board of Managers Pelican River Watershed District
<u>Owner</u>	Pelican River Watershed District Detroit Lakes, Minnesota
<u>Engineer</u>	The Engineer appointed by the Board of Managers to act as Engineer in charge of the work, or assistants and inspectors authorized to act for him/her.
<u>Contractor</u>	The person, firm or corporation with whom the Contract is made by the Board of Managers, Pelican River Watershed District.
<u>Bidder</u>	Any individual, firm or corporation submitting a proposal for the work contemplated.
<u>Surety</u>	The persons or the corporate body which is bound with and for the Contractor and which engages to be responsible for his payment of all debts pertaining to and for his acceptable performance of the work for which he is contracted.
<u>Plans</u>	All drawings or reproductions of drawings pertaining to the work and its construction.
<u>Specifications</u>	The directions, provisions, and requirements contained herein, together with all written agreements made or to be made pertaining to the method and manner of performing the work or to the quantity and quality of the materials to be furnished under the contract.

### Working Day

A calendar day, determined by the Engineer, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for at least 4 hours of the day with the normal working force engaged in performing the work which would be in progress at that time, exclusive of Saturdays, Sundays, and legal holidays.

### 3.1.02 RIGHT-OF-WAY

Representatives of the Pelican River Watershed District shall have access to the Project whenever it is in preparation or progress. The Contractor shall provide proper facilities for such access and inspection.

### 3.1.03 HAULING RESTRICTIONS

If the Contractor desires to establish any haul routes or equipment storage areas on private property, he shall make all necessary arrangements with the property owners. Any roads or haul routes damaged as part of construction activities will be repaired at the Contractor's expense.

### 3.1.04 SCOPE OF WORK

The Contractor shall include in his or her proposal all of the work outlined on the drawings and/or included in the specifications and shall include the cost of all work whether or not indicated on the drawings or mentioned in the specifications, but which may be required to complete the project. All material removed from the site shall be hauled to a permitted and approved landfill.

### 3.1.05 CONDITIONS AT SITE

The enclosed maps and project inventory lists are not intended to be a complete inventory of the remaining items on the site but are only intended for reference. Bidders must satisfy themselves by personal investigation and by such other means as they may think necessary or desirable as to the location of and the conditions affecting the proposed work and as to the cost thereof. No information derived from maps, plans, specifications, profiles, or drawings, or from the engineer or his own assistants, or any other official, employee, or agent of the owner will relieve the contractor from any risk or from fulfilling all of the terms of the contract.

The accuracy of the Contractor's interpretation of the facts disclosed by any preliminary investigation that may have been made by the engineer is not guaranteed. The engineer's estimate of quantities given in the statement of work is to be considered as preliminary and approximate only, and to be used only for the purpose of canvassing and comparing bids. The contractor shall not, at any time, make claims to additional payments or considerations on account of any misunderstanding regarding the nature or amount of the work to be done.

### 3.1.06 MATERIAL STORAGE

The Contractor shall store his materials and equipment in such a place and in such a manner that a minimum of congestion will result. The placing of said equipment shall be subject to the approval of the engineer. Material and equipment may not be stored within the clear zone of Highways. Material and equipment storage may not be placed in such a manner that disrupts the use of road, field access, building access, water access, or utility access.

### 3.1.07 INTERPRETATION OF DOCUMENTS

The Contractor shall carefully read the specifications before submitting bids on the work to be done. If any contractor contemplating submitting a bid for the proposed contract documents is in doubt as to the true meaning of any part of the specifications, he may submit to the engineer a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only in writing duly issued, a copy of which will be mailed or delivered to each bidder receiving a copy of the plans and specifications and to such other prospective bidders as have requested that they be furnished with a copy of each.

### 3.1.08 TESTING

The Owner shall provide all testing. The amount of testing shall be as called for in the specifications or as judged to be necessary by the engineer or his representative.

### 3.1.09 LOCATION OF EXISTING UTILITIES

The contractor is cautioned that all existing utilities may not be shown. The location of existing utilities is not guaranteed, and the contractor will be responsible for determining the exact location and protection of the existing utilities.

The contractor, before commencing any excavation or construction, shall find out the location and seek aid in locating all public and private utilities.

No extra compensation or waiver of liquidated damages shall be allowed for delays in the work due to a lack of coordination with the utility companies. The contractor will be responsible to verify that all utilities to the demolition properties are capped or disconnected properly, except to buildings that are scheduled to remain on the properties.

### 3.1.10 STREETS TO BE KEPT CLEAN

Streets and highways that are being used by the Contractor and his forces to and from, as well as in the project site, shall be kept clean and dust-free at all times for the duration of the project and at project completion. The Contractor shall periodically inspect all haul routes to ensure that any debris lost during transportation is cleaned up. If it is determined by the Engineer that the roadways are not being maintained, the Contractor shall cease work until the roadway has been cleaned at the direction of the Engineer.

### 3.1.11 CONSTRUCTION STAKING

All survey and stakes for alignment and grade will be made and set by the Engineer or his delegated representative.

The Contractor shall give the Engineer at least five (5) working days (Monday-Friday) notice before requiring the survey crew to be on a project site to commence construction staking. This minimum notice is required whenever the Contractor prepares to commence work on any portion of the contract, or at any new place, as well as at any place where work has been relinquished or stopped for any cause.

If there is no portion of the contract with the initial construction staking complete so that the Contractor is unable to proceed with construction, then at the discretion of the Engineer, the Contractor may be granted a temporary suspension of the working days or an extension of the completion date of the contract. No other compensation will be granted. The working days count will be started as soon as the staking is complete on any portion of the contract.

All work done under this contract shall be built in accordance with the line and grade shown on the plans or as given by the Engineer.

The Contractor is responsible for the preservation of all stakes and marks in their proper positions, and in case any of them are lost, destroyed or obliterated after once having been given, he shall at once notify the Engineer, and all expense incurred by the Owner in replacing the same may be charged against the Contractor and deducted from the estimates solely according to the judgment of the Engineer. Any delays in construction due to the time it takes to replace stakes shall not be considered as a justifiable delay and thus no allowances will be made in either working day or completion date schedules.

### 3.1.12 EROSION CONTROL

The Contractor shall protect disturbed portions of the project from erosion throughout the construction period and until final vegetation has established. Erosion control shall be provided in accordance with MNDOT Specification 2573 to prevent the discharge of soil materials from the project site. Clean up and repair of all erosion damage will be completed by the Contractor at no cost to the Owner.

### 3.1.13 REQUEST FOR ADDITIONAL TIME

At any time before expiration of the original or extended contract time, a written request may be made to the Engineer for additional time to complete the contract. The request shall be supported by adequate documentation stating the reasons and basis for the request. The Engineer's determination will consider to what extent the delays were caused by conditions beyond the contractor's control that may be offset by time lost due to the failure to diligently prosecute the work or to other conditions within the Contractor's control. A plea that insufficient time was specified is not a valid reason for a time extension.

### 3.1.14 FINAL INSPECTION

After the Contractor has completed the installation of the public facility and any clean-up items, he shall make a written request to the engineer for a final inspection. Upon receipt of this request, the Engineer will set a date and time for the final inspection.

### 3.1.15 CONSTRUCTION AND TRAFFIC PHASING

The Contractor will be required to phase operations (subject to approval and modifications by the Engineer) as necessary to maintain traffic access. The Contractor shall be responsible for daily inspections and maintenance of the temporary traffic control devices. If it is determined by the Engineer that the temporary traffic control devices are not being maintained the Contractor will cease work immediately to correct all traffic control concerns as directed by the Engineer. The Contractor shall coordinate with property owners and ensure the property owners have access to their property.

### 3.1.16 DNR CONDITIONS FOR WORK IN PELICAN RIVER (PRWD Ditch No. 13)

No work is allowed in the Pelican River (PRWD Ditch No. 13) without approval of the Engineer. No activity affecting the bed of the protected water may be conducted between March 15 and June 15, to minimize impacts on fish spawning and migration. If work is essential, it shall be done only upon written approval of the Area Fisheries Manager. See contact list at:

[http://files.dnr.state.mn.us/fisheries/management/dnr\\_fisheries\\_managers.pdf](http://files.dnr.state.mn.us/fisheries/management/dnr_fisheries_managers.pdf).

Should work begin elsewhere in the project area within these dates, all exposed soils that are within 200 feet of Public Waters and drain to those waters must complete erosion control measures within 24 hours of its disturbance to prevent sediment from entering Public Waters.

### 3.1.17 CONTRACTOR RESPONSIBILITY

The Contractor shall thoroughly review and understand all conditions listed within the permits issued by the Minnesota Department of Natural Resources (MN DNR). Contractor shall abide by all conditions listed within the MN DNR Permits. No separate payment will be made for complying with MN DNR permits conditions.

END OF SECTION

## **PART 4**

# **GENERAL REQUIREMENTS**

## SECTION 4.1

### GENERAL REQUIREMENTS

#### 4.1.01 MATERIALS: SPECIFICATIONS, SAMPLES, TESTS AND ACCEPTANCE

Shop Drawings shall be submitted prior to either manufacture or delivery of materials to the construction site. If the Contractor proposes to substitute materials on an “or equal/equivalent” basis, the request shall be made in writing, and the proposed substitution items shall be clearly identified as such in the shop drawing submittal, which shall contain all appropriate specification documentation needed to evaluate the substitution. The determination of whether the product meets the specifications as an “or equal/equivalent” product shall be at the sole discretion of the Engineer. If evaluated and found to be an “or equal/equivalent” a written approval letter from the Engineer will be issued for the substitution of materials as per the request.

All materials shall be tested as detailed in MNDOT Standard Specifications for Construction 2020 Edition, Special Provisions and MNDOT Schedule for Materials Control. The testing of construction materials will be the responsibility of the Owner unless otherwise specified in the specifications. The Owner shall have the authority to stop work in order to correct or replace such items that have failing test results.

The contractor shall be responsible for all costs associated with the failing test, including but not limited to labor, equipment, and materials required for correction or replacement of failing work, additional testing required to determine the extent of failing work, or repeated testing of failing work.

#### 4.1.02 USE OF ROADS

The Contractor may be permitted to block off a portion of a public road on which work is in progress; coordination of all road closings will be negotiated with the road authority. The Contractor shall make provisions to provide access at all times to property abutting the project. All traffic control signing and devices shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including Temporary Traffic Control Zone Layout Field Manual, dated 2018, and shall be coordinated with the road authority. Traffic control necessary to complete the proposed work shall be considered incidental to the project.

The Contractor shall provide adequate signs, barricades, and watchmen and take all necessary precautions for the protection of the work and the safety of the public. All traffic control devices shall meet all requirements of Sections 2554 and 2564 of the MNDOT Standard Specifications. Suitable warning signs shall be so placed as to show in advance where construction, barricades, or detours exist.

The Contractor shall make provisions to provide access at all times to all properties abutting the project. If at times access is not feasible the Contractor shall be responsible for coordination with all affected landowners.

#### 4.1.03 PROCEDURE FOR BIDDING

The Contractor must submit bids for all items of work as shown on the Bidder's Proposal.

#### 4.1.04 SUBCONTRACTORS

The Contractor shall submit to the Engineer for approval within 10 days after Notice of Award a list of the subcontractors anticipated to perform work on the project. All subcontractors must be approved by the Engineer.

#### 4.1.05 ASSIGNMENT OF CONTRACT

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of his right, title, or interest therein, without written consent of the Owner. In case consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform with his own organization, work amounting to not less than 50 percent of the total original Contract cost, except that any items designated in the Contract as "specialty items" may be performed by subcontract and the cost of any specialty items so performed by subcontract will be deducted from the total cost before computing the amount of work required to be performed by the Contractor with his own organization. No subcontracts, or transfers of contract, shall release the Contractor of his liability under the Contract and Bonds.

#### 4.1.06 DRAWINGS AND SPECIFICATIONS

Five copies of the drawings and specifications will be furnished to the Contractor at no charge. If the Contractor requires additional copies, he shall compensate the Engineer for the cost of the reproduction.

#### 4.1.07 INSPECTION OF WORK

The Owner and its representative shall at all times have access to the work wherever it is in preparation or progress and the contractor shall provide proper facilities for such access and inspection.

The Owner shall have the right to reject materials or workmanship which does not conform to the plans and specifications and all defective work shall be satisfactorily corrected, and rejected materials shall be removed from the premises without charge to the Owner. If the contractor does not correct such condemned work and remove rejected materials within a reasonable time, as fixed by written notice; the Owner may remove them and charge the expense to the Contractor.

The work will be conducted under the general direction of the Engineer and is subject to inspection by his authorized inspectors to ensure strict compliance with the terms of these Contract Documents. No inspector is authorized to change any provisions of the plans or specifications without written authorization of the Engineer, nor shall the presence or absence of an inspector relieve the contractor from any requirement of the contract.

#### 4.1.08 ACCEPTANCE OF WORK

Upon written notice from the Contractor that all work has been completed, the Engineer will make an inspection of the entire project. If any work is found unsatisfactory or incomplete, a list of discrepancies (punch list) will be issued in writing and another inspection will be made after receiving notice that the discrepancies have been corrected.

Neither acceptance by the Owner, the final payment, or any provisions in the Contract Documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship within the extent and period required by law and upon written notice, he shall remove any defects due thereto and pay for any damage to other work resulting there from which shall appear within twelve (12) months after the date of completion and acceptance. The Owner shall interpret the day of completion and acceptance as being the day on which the work is accepted, and final payment approved.

#### 4.1.09 CORRECTION PERIOD

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents or any subsequent agreement, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: (i) correct such defective work, or, if it has been rejected by Owner, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work or the work of others resulting there from. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective work corrected or the rejected work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

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 or by written amendment.

Where defective work (and damage to other work resulting there from) has been corrected, removed or 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.

#### 4.1.10 GOVERNING SPECIFICATIONS

The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" shall govern for any required technical specification that is not addressed within each Section.

END OF SECTION

## **PART 5**

# **TECHNICAL SPECIFICATIONS**

SECTION 5.1

MOBILIZATION

5.1.01 SCOPE

This work consists of preparatory work and operations that include the movement of personnel, equipment, supplies, and incidentals to the project site. This work may also include obtaining bonds, permits, and demobilizing.

5.1.02 MEASUREMENT AND PAYMENT

- a. Mobilization required to complete the project as shown in the plans and specified in these specifications will be made as a lump sum payment at the contract unit price for the item “Mobilization.”
- b. The Engineer will provide partial payments for mobilization in accordance to the following table:

<b>When</b>	<b>Contract Unit Price for Mobilization is less than 5 percent of the total contract amount, pay</b>	<b>Contract Unit Price for Mobilization exceeds 5 percent of the total contract amount, pay</b>
<b>Percent of Original Contract Amount Completed*</b>	<b>Percent of Mobilization</b>	<b>Percent of Original Contract Amount *</b>
5	50	3
15	75	5
25	100	5
95	100	—

\* The percent of Original Contract Amount = the amount earned by the Contractor, excluding money earned for mobilization and material on hand, divided by the total value of the original contract (all contract items).  
If the contract unit price for mobilization exceeds 5 percent of the total original contract amount, the Department may withhold (on any partial estimate) the portion in excess of 5 percent until the Contractor earns at least 95 percent of the original contract amount.

- c. The Engineer will not pay more than the original contract unit price for the mobilization item, even if the Contractor shuts down work on the project or moves equipment away from the project and then back again.

END OF SECTION

## SECTION 5.2

### CLEARING AND GRUBBING

#### 5.2.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials, and in performing all operations in connection with clearing and grubbing and tree removal where shown on the plans or as needed to complete the required work items.

#### 5.2.02 METHODS OF CONSTRUCTION

All trees, brush, shrubs, stumps, roots, windfalls, and other plant life will be removed as needed from the construction area. Proper removal and disposal will be the responsibility of the Contractor. The Contractor shall visit the site to familiarize themselves with the size and number of trees that need to be removed to complete the project. Tree stumps will be removed completely from the side slope that is being excavated. Where tree stumps are located within spoil bank areas, they may be cut-off at a point six inches above the existing ground elevation and buried. The Contractor will conduct all clearing and grubbing operations in a manner that will not damage the surrounding plant life and property.

#### 5.2.03 MEASUREMENT AND PAYMENT

- a. All measurements and payments will be based on completed and accepted work. The payments listed below shall be full compensation for all plant, labor, materials, equipment, tools, and incidental items necessary to complete the work.
  1. Clearing and grubbing of all brush, roots, windfall, and plant life, required for site access or constructing project features will not be measured for payment, but will be paid for at the contract lump sum price for "Clearing and Grubbing".
  2. Tree removal and disposal, required for site access or constructing project features, will not be measured for separate payment, but shall be considered incidental to the "Clearing and Grubbing" bid item.

END OF SECTION

## SECTION 5.3

### REMOVALS

#### 5.3.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with removal of various items shown in the plans or as directed by the Engineer.

#### 5.3.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.3.03 MATERIALS

- a. Removals shall be as defined in MnDOT Standard Specification 2104.

#### 5.3.04 CONSTRUCTION

- a. Removals shall be performed in accordance with MnDOT Standard Specification 2104 and all other applicable MnDOT Standard Specifications.

#### 5.3.05 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. Payment shall be full compensation for all plant, labor, equipment, appliances, materials, and incidental items necessary to complete the work.
  1. Modify Existing Dam: Modifications and removals of the existing dam will be made as lump sum payment for the item "Modify Existing Dam."

END OF SECTION

## SECTION 5.4

### RIPRAP

#### 5.4.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with the installation of riprap where shown in the plans or as directed by the Engineer.

#### 5.4.02 APPLICABLE SPECIFICATIONS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.4.03 MATERIALS

- a. Rock Riprap: Stone for riprap will be durable field stone and shall be sound, hard, and free from cracks or seams. The gradation of the supplied stone shall conform to MnDOT Table 3601.2-1 for the class listed in the proposal. The stones will be generally round in shape and conform to the size range indicated in the gradation table. Copies of such certification shall be furnished to the Engineer. Stone used for riprap shall not have a fractured face.
- b. Rock Weir Boulders: Stones used to construct the Rock Weir Boulders, as indicated on the Construction Plans, will be durable field stone and shall be sound, hard, and free from cracks or seams. The stones will be generally round in shape and conform to the size range indicated on the Construction Plans.
- c. Flat Rock Boulders: Stones used to construct the Flat Rock Boulders, as indicated on the Construction Plans, will be durable field stone and shall be sound, hard, and free from cracks or seams. The stones will be generally flat on one side and conform to the size range indicated on the Construction Plans.
- d. Foundation Preparation: All fill material beneath the riprap ramp shall be Random Riprap Class II mixed with a well graded mix of aggregate varying from the No. 40 Sieve up to 3-inch stones or excavated channel material with Engineer's approval. Any additional channel excavated material shall be wasted as directed by the field representative. Disposal of waste material shall not be paid for separately but instead be considered incidental to other bid items.

#### 5.4.04 METHOD OF CONSTRUCTION

- a. Rock Riprap: The foundation for the riprap will be compacted and shaped to the cross-section as shown on the plans or as directed by the Engineer. The riprap will be placed approximately to the thickness shown on the plans and the stones will be firmly embedded in the foundation material. The stones will be laid so that the weight of the stones will be carried by both the foundation material and the adjacent stones. Riprap placed on slopes of banks shall generally be placed from toe to crest. Stones shall not be allowed to roll or slide down slope. Riprap shall not be dropped from a height greater than 3 feet. Riprap will be placed as indicated in the Construction Plans. Riprap to be mixed with a well graded mix of aggregate varying from the No. 40 sieve up to 3-inch stones and applied as a single, well-mixed building material to form a solid, no-void ramp. The mix of aggregate should be such that it is not blown out of the riprap by the rivers current and forces river flow over the riprap.
- b. Rock Weir Boulders: The location of the Rock Arch will be as indicated on the Construction Plans and verified by the engineer or the authorized on-site representative. Boulders for the Rock Arch are to be integrated into the constructed channel banks. Gaps between boulders shall typically range from 0 to 12 inches. The riprap material moved to allow placement of boulders will be placed to fill the remaining voids between the Rock Weir Boulders. Excavated channel material will be placed as noted on the Construction Plans or as instructed by the engineer or on-site representative.
- c. Flat Rock Boulders: The location of the Flat Rock Boulders will be as indicated on the Construction Plans and verified by the engineer or the authorized on-site representative. The riprap material moved to allow placement of boulders will be placed to fill the remaining voids between the Rock Weir Boulders. Excavated channel material will be placed as noted on the Construction Plans or as instructed by the engineer or on-site representative.
- d. Foundation Preparation: All fill material beneath the rock riprap shall be Class II riprap mixed with a well graded mix of aggregate varying from the No. 40 sieve up to 3-inch stones or excavated channel material with Engineer's approval. Any additional channel excavated material shall be wasted as directed by the field representative.
- e. Placement in Water: Material to be placed under water shall be placed in a systematic manner to ensure a continuous uniform layer of well-graded stone of the required thickness. The Contractor shall minimize the drop height of material placed under water to avoid particle segregation during placement. Material to be placed under water shall not be cast across the surface of the water.

#### 5.4.05 MAINTENANCE

- a. Rock Riprap: The Contractor shall be responsible for maintenance of the riprap for a period of 1 year following completion of the project. Maintenance shall include placing additional well graded mix of aggregate varying from the No. 40 sieve up to 3-inch stones to fill any remaining voids, replacement of riprap sections that have been washed out, or placement of salvaged riprap that has been misplaced. Maintenance requirements for riprap shall be at the discretion of the Engineer.
- b. Rock Weir Boulders: The Contractor shall be responsible for maintenance of boulders placed for the rock weirs for a period of 1 year following completion of the project. Maintenance shall include moving any misplaced boulders to a location specified by the Engineer. Maintenance requirements for the boulders shall be at the discretion of the Engineer.

#### 5.4.06 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. Payment shall be full compensation for all plant, labor, equipment, appliances, materials, and incidental items necessary to complete the work.
  1. Foundation Preparation: Foundation preparation, including the placement of salvaged channel excavated material and/or removal of channel excavated material from site, will not be measured for separate payment but shall be considered as a subsidiary item to riprap.
  2. Riprap: Riprap will be measured in units of cubic yards in place by multiplying the area covered by the surfacing times the specified thickness as shown in the plans. Aggregate material used to fill voids in the riprap will be considered part of the installed riprap section. Payment will be made at the contract unit price per cubic yard for the item "Random Riprap" of the size and class listed in the proposal. Truck load tickets will not be used for payment. Fill material beneath the riprap ramp will be paid for based on the plan quantity. No additional measurement or payment will be made. Unless extenuating conditions exist which can be documented by the Contractor, the Contractor will not be compensated for overruns in riprap quantities. No separate measurement or payment will be made for aggregate material used to fill voids in the riprap.
  3. Rock Weir Boulders: Rock Weir Boulders will be measured in units of linear feet along the centerline of the Rock Arches placed. Payment will be made at the contract unit price per linear foot for the item "Rock Weir (36" to 60" Diameter Boulders)" listed in the proposal.

4. Rock Boulders: Additional boulders placed randomly between the weirs will be measured on the unit basis of each (EA) for each rock boulder installed. The additional boulders will be paid at the contract unit price under the bid item “Rock Boulders (36” to 60” Diameter Boulders)” for each boulder installed.
  
5. Salvaged Riprap: Riprap salvaged during the installation of the Rock Arch Rapids Fish Passage shall not be measured for separate payment but shall be considered incidental to the bid items “Random Riprap Class II” and “Random Riprap Class III”. Placement of salvaged riprap within the rock ramp will not be paid for separately, but instead be incidental to other bid items.

END OF SECTION

## SECTION 5.5

### CHANNEL EXCAVATION

#### 5.5.01 SCOPE

The Contractor shall furnish all plant, labor, equipment, appliances, and materials required in performing all operations in connection with excavation as shown on the plans.

#### 5.5.02 APPLICABLE SPECIFICATIONS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.

1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.5.03 EXCAVATION

Excavation operations will be conducted as necessary to facilitate installation of the Rock Arch Rapids Fish Passage as defined in the Construction Plans. Excavation shall be completed in an orderly manner. **Channel excavation should be limited to constructing the Rock Arch Rapids Fish Passage as indicated in the Construction Plans and transitioning to the existing channel cross section.** The Contractor shall employ the type of equipment best suited to the site conditions. Some excavated material will be placed as indicated in the Construction Plans. Excess excavated material shall be wasted at the direction of the engineer.

Excavation activities will maintain river access for waterways and other drainage structures. The Contractor shall protect from damage all culvert or tile ditch inlets. Any structures damaged by construction operations shall be repaired by the Contractor to the satisfaction of the Engineer at the contractor's expense.

#### 5.5.04 UTILITIES

The Contractor will be responsible to protect all utilities within the construction limits whether or not shown on the plans. It is the Contractor's responsibility to notify utilities for locates by contacting the Gopher State One Call: phone: 800-252-1166, website: [www.gopherstateonecall.com](http://www.gopherstateonecall.com).

#### 5.5.05 CLEANUP

The Contractor shall remove all materials and debris from the construction area as work progresses in order that the property owner can have the use of the land at the earliest possible date.

#### 5.5.06 MEASUREMENT AND PAYMENT

- a. All measurements and payments will be based on completed and accepted work. The payments listed below shall be full compensation for all plant, labor, materials, equipment, tools, and incidental items necessary to complete the work.
1. Channel Excavation: Excavation will not be measured for payment, rather will be considered incidental to other bid items.
  2. Placement of Excavated Material: All excavated materials shall either be placed as salvaged material beneath the design select granular layer of the rock ramp or disposed of off-site as waste material. The placement of all excavated material, salvaged or wasted will not be measured for separate payment, rather will be incidental to other bid items.
  3. Hauling: Any loading, hauling and unloading of excavated materials will not be measured for separate payment, rather will be incidental to other bid items.
  4. Stripping, hauling, and spoiling excavated material will not be measured for payment, rather will be incidental to other bid items.
  5. Additional stripping based on actual soil conditions encountered will not be measured for payment, rather will be incidental to other bid items.

END OF SECTION

## SECTION 5.6

### EMBANKMENT

#### 5.6.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with embankment where shown in the plans or as directed by the Engineer.

#### 5.6.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. MnDOT Standard Specifications for Construction, 2020 Edition
  2. MnDOT Grading and Base Manual

#### 5.6.03 MATERIALS

- a. Topsoil Import shall be in accordance with MnDOT Standard Specification 3877.

#### 5.6.04 CONSTRUCTION

- a. Topsoil Import shall be placed at the locations and to the depths shown in the plans.

#### 5.6.05 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. Payment shall be full compensation for all plant, labor, equipment, appliances, materials, and incidental items necessary to complete the work.
  1. Topsoil Import: Topsoil Import will be paid for based on plan quantity in units of cubic yards. Contract unit price includes the costs of delivery, placement, and final finishing. Payment will be made at the contract unit price per cubic yard for the item "Topsoil Import".

END OF SECTION

## SECTION 5.7

### DRAINAGE STRUCTURES

#### 5.7.01 SCOPE

- a. This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with the installation of drainage structures and structure modifications where shown in the plans or as directed by the Engineer.

#### 5.7.02 APPLICABLE SPECIFICATIONS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.7.03 MATERIALS

- a. Corrugated Steel Pipe and Corrugated Steel Pipe-Arches: Corrugated steel pipe and pipe arches will be in accordance with Section 3226 of MNDOT Specifications and will be of the size and gage as indicated in the Proposal. Connecting bands shall not be less than 7 corrugations in length and may be of one or two piece construction. Spiral or riveted pipe is acceptable for corrugated steel pipe except that riser, connecting stub pipes, and conduits for erosion control structures shall be close riveted pipe with caulked joints.
- b. Pipe Joint Sealer Materials: Pipe joint sealer material shall be in accordance with MnDOT Standard Specifications 3726 and 3728.

#### 5.7.04 INSTALLATION OF DRAINAGE STRUCTURES

- a. Handling: All pipe for drainage structure shall be new and unused. All foreign material shall be cleaned from inside of pipe and joints prior to installation.
- b. Excavation: Drainage structure excavation shall be in accordance with Specification 5.8 "Structure Excavation".
- c. Bedding: Drainage structure bedding shall be in accordance with Specification 5.8 "Structure Excavation".

- d. Laying of Pipe and Appurtenances: Pipe and appurtenances shall be installed in accordance with MnDOT Standard Specification 2501 and the following:
  - 1. Grade at any point of the drainage structure shall not vary by more than 0.1 foot from the staked grade. Prior to backfilling operations, each drainage structure installation shall be approved by the Engineer. Drainage structures shall be staked for line and grade by the Engineer.
- e. Backfilling of Drainage Structures: Drainage structures shall be backfilled in accordance with Specification 5.8 “Structure Excavation”.
- f. Drainage Structure Cleaning: After the drainage structure has been installed, the Contractor shall clear obstructions to water flow as specified by the Engineer.

#### 5.7.05 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. Payment shall be full compensation for all plant, labor, equipment, appliances, materials, and incidental items necessary to complete the work.
  - 1. Corrugated Metal Pipe: Corrugated metal pipe will be installed where shown on the plans or indicated by the Engineer in the field. The CMP listed in the Proposal shall be furnished in the lengths as shown on the plans or as determined by the Engineer in the field. New corrugated steel pipe used will be measured in units of lineal feet installed and payment will be made at the contract unit price per lineal foot for the size listed in the Proposal. Installed length will be measured along the culvert invert. For circular center line structures, top and bottom step beveled ends will be required and will be incidental to pipe price.
  - 2. Steel Flap Gates: New steel flap gates will be measured in units of Each and payment will be made at the contract unit price for “Steel Flap Gate” of the size as listed in the Proposal. Flap gates will be sealed with tar which will be incidental to flap gate installation.
  - 3. Joints and Connections: Joints and connections, including bands, ties, pipe joint sealer materials, and geotextile pipe wrap, will not be measured for separate payment but included in the contract unit prices of culvert pipe and appurtenant items.
  - 4. Drainage Structure Cleaning: Drainage structure cleaning shall not be measured separately for payment but included in the contract unit prices of culvert pipe and appurtenant items.
  - 5. Drainage Structure Excavation, Bedding, and Backfill: Measurement and payment shall be as defined in Specification 5.8 “Structure Excavation”.

END OF SECTION

## SECTION 5.8

### STRUCTURE EXCAVATION

#### 5.8.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with structure excavation where shown in the plans or as directed by the Engineer.

#### 5.8.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.8.03 MATERIALS

- a. The Engineer will not specify special backfill materials for culvert pipes.

#### 5.8.04 STRUCTURE EXCAVATION

- a. Structure excavation shall be performed in accordance with MnDOT Standard Specification 2451 and the following:
  1. All excavation, foundation preparation, bedding, placing, and compacting backfill shall be performed at the locations and to the depths shown in the plans.

#### 5.8.05 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be made based on completed and accepted work. Payment shall be full compensation for all labor, equipment, materials, and incidental items necessary to complete the work.
  1. Structure Excavation: Structure excavation will not be measured separately for payment but included in the contract unit prices of culvert pipe and appurtenant items.
  2. Culvert Pipe Excavation: Excavation for culvert pipes will not be measured separately for payment but included in the contract unit prices of culvert pipe and appurtenant items.

3. Culvert Pipe Backfill: Backfill for culvert pipes will not be measured separately for payment but included in the contract unit prices of culvert pipe and appurtenant items.

END OF SECTION

## SECTION 5.9

### WATER CONTROL

#### 5.9.01 SCOPE

The work covered by this section of the specifications consists of furnishing all plant, equipment, labor, and materials, and performing all operations in connection with channel diversion and/or dewatering necessary to proceed with the construction required by the contract in accordance with the specifications.

#### 5.9.02 DIVERTING SURFACE WATER / TEMPORARY RIVER CROSSING

The contractor shall build, maintain and operate all cofferdams, channels, flumes, sumps, temporary river crossings and other temporary diversion and protective works needed to divert streamflow and other surface water through or around the construction site and away from the construction work while construction is in progress. Unless otherwise specified, a diversion must discharge into the same natural drainageway in which its headworks are located.

Unless otherwise specified, the contractor shall furnish to the engineer, in writing, his plan for diverting surface water before beginning the construction work for which the diversion is required. Acceptance of this plan will not relieve the contractor of responsibility for completing the work as specified.

The Contractor shall be responsible for and shall repair at his expense any damage to the foundations, structures, or any other part of the work caused by floods, water, or failure of any part of the diversion or protective works.

#### 5.9.03 DEWATERING THE CONSTRUCTION SITE

Foundations, cutoff trenches and other parts of the construction site shall be dewatered and kept free of standing water or excessively muddy conditions as needed for proper execution of the construction work. The contractor shall furnish, install, operate and maintain all drains, sumps, pumps, casings, wellpoints, and other equipment needed to perform the dewatering as specified. Dewatering methods that cause a loss of fines from foundation areas will not be permitted.

Unless otherwise specified, the contractor shall furnish to the engineer, in writing, their plan for dewatering before beginning the construction work for which the dewatering is required. Acceptance of this plan will not relieve the contractor of responsibility for completing the work as specified.

#### 5.9.04 DEWATERING BORROW AREAS

Unless otherwise specified, the contractor shall maintain the borrow areas in drainable condition or otherwise provide for timely and effective removal of surface and ground waters that accumulate within the borrow areas from any source. Borrow material shall be processed as necessary to achieve proper and uniform moisture content for placement.

#### 5.9.05 EROSION AND POLLUTION CONTROL

Removal of water from the construction site, including the borrow areas shall be accomplished in such a manner that erosion and the transmission of sediment and other pollutants are minimized.

#### 5.9.06 REMOVAL OF TEMPORARY WORKS

After the temporary works have served their purposes, the contractor shall remove them or level and grade them to the extent required to present a slightly appearance and to prevent any obstruction of the flow of water or any other interference with the operation of or access to the permanent works.

Except as otherwise specified, pipes and casings shall be removed from temporary wells and the wells shall be filled to ground level with gravel or other material approved by the engineer.

#### 5.9.07 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. The payments listed below shall be full compensation for all plant, labor, materials, equipment, tools, and incidental items necessary to complete the work.
  1. Water control (including installation and removal of all cofferdams, dikes, temporary river crossings, channels, flumes, casings, well points or other diversion and dewatering works as may be required for the job) will not be measured for separate payment but shall be considered subsidiary to the removal and/or installation of other bid items.

END OF SECTION

## SECTION 5.10

### EROSION CONTROL

#### 5.10.01 SCOPE

This section of the specifications covers work related to furnishing all plant, labor, equipment, appliances, and materials in performing all work in connection with erosion control where shown in the plan or as directed by the Engineer.

#### 5.10.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.10.03 MATERIALS

- a. Stabilized Construction Exit materials shall be in accordance with details shown in the plans and all other applicable MnDOT Standard Specifications.
- b. Storm Drain Inlet Protection shall be in accordance with details shown in the plans and all other applicable MnDOT Standard Specifications.
- c. Culvert End Control materials shall be in accordance with details shown in the plans and all other applicable MnDOT Standard Specifications.
- d. Type 4 (Topsoil) Filter Berms shall be in accordance with details shown in the plans and MnDOT Standard Specification 3874.
- e. Silt Fence shall be in accordance with MnDOT Standard Specification 3886.
- f. Flotation Silt Curtain shall be in accordance with MnDOT Standard Specification 3887.
- g. Erosion Control Blanket shall be in accordance with MnDOT Standard Specification 3885.

#### 5.10.04 CONSTRUCTION

- a. Erosion Control shall be in accordance with MnDOT Standard Specification 2573 and details shown in the plans.

#### 5.10.05 MEASUREMENT AND PAYMENT

- a. General: All measurements and payments will be based on completed and accepted work. Payment shall be full compensation for all plant, labor, equipment, appliances, materials, and incidental items necessary to complete the work.
  1. Flotation Silt Curtain: Flotation Silt Curtain Type Moving Water will be measured by units of linear feet. Contract unit price includes the costs of installation, maintenance, removal and disposal of trapped sediment, and removal of the device. Payment will be made at the contract unit price per linear foot for the item “Flotation Silt Curtain Type Moving Water.”
  2. All other erosion control measures will not be measured for separate payment but shall be considered subsidiary to the removal and/or installation of other bid items.

END OF SECTION

## SECTION 5.11

### HYDROSEEDING

#### 5.11.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials in performing all work in connection with hydroseeding where shown in the plans or as directed by the Engineer.

#### 5.11.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.11.03 MATERIALS

- a. Hydroseeding: Hydroseeding shall be in accordance with MnDOT Standard Specification 3876. Hydroseeding shall consist of MnDOT Seed Mixture 25-131 Low Maintenance Turf at a seeding rate of 220 lb/acre.
- b. Hydraulic Mulch Matrix: Hydraulic Mulch Matrix shall be in accordance with MnDOT Standard Specification 3882 and applied at a rate of 2100 lb/acre.
- c. Fertilizer: Fertilizer shall be in accordance with MnDOT Standard Specification 3881. Fertilizer shall be 10-20-20 (NPK) and applied at a rate of 300 lb/acre.

#### 5.11.04 APPROVAL OF MATERIALS

- A. Seed: At least ten (10) days prior to contemplated use, the Contractor shall furnish duplicate copies of invoices and duplicate copies of a statement from the vendor certifying that each container of seed delivered is fully labeled in accordance with the Federal Seed Act and is at least equal to the requirements specified. If required, the Contractor shall also furnish samples of each lot of seed.

#### 5.11.05 CLEARING

Prior to or during grading, topsoiling and tilling operations, the ground surface shall be cleared of all brush, stumps, roots, stones larger than one (1) inch in diameter, wire or any other material which may hinder proper grading, tilling, planting, or subsequent maintenance operations and any accumulated debris shall be disposed of as directed.

#### 5.11.06 SEEDING LOCATIONS

Seeding will only be completed along disturbed areas that result from the installation the project bid items. Disturbed areas shall be returned to vegetated condition prior to construction. Determination of seeding areas will be at the discretion of the Engineer or the authorized on-site representative.

#### 5.11.07 CONSTRUCTION

- a. Hydroseeding shall be performed in accordance with MnDOT Standard Specification 2575 and the following:
  1. Seeding shall consist of MnDOT Seed Mixture 25-131 Low Maintenance Turf at a rate of 220 lb/acre
  2. Perform Soil Preparation in accordance with MnDOT Standard Specification 2574 prior to seeding operations.
- b. Mulching shall be applied in accordance with MnDOT Standard Specification 2575 and the following:
  1. Mulching shall be Hydraulic Mulch Matrix and applied at a dry material targeted application rate of 2,100 pounds per acre.

#### 5.11.08 WATERING OF SEEDED AREA

- a. Immediately following completion of seeding, all seeded areas shall be given sufficient watering to moisten the seedbed to a depth of 2 inches. Water shall be applied in a manner that provides uniform coverage and prevent erosion and damage to the final surface. The Contractor shall provide daily watering for the first five days and sufficient water to maintain surface moisture in the top 2 inches of the soil for the following 2 weeks to ensure germination of the seed. If dormant seeding is performed, watering requirements will be suspended until the spring when conditions are appropriate.

#### 5.11.09 PROTECTION OF PLANTED AREAS

The Contractor shall protect all planted areas against traffic or other use by placing warning signs of an approved type and erecting all necessary barricades immediately after planting is completed. Any damage that may occur prior to final acceptance of the work shall be repaired to re-establish the condition and/or grade of the soil prior to injury and shall then be replanted by the Contractor as hereinbefore specified for the applicable planting.

#### 5.11.10 CLEANUP AND REPAIR OF DAMAGE

- A. Cleanup of planting sites and work areas shall include the removal of excess earth or other waste materials during the progress of the work.
- B. Repair of Damage: Any existing turf areas disturbed or damaged as a result of operations of the Contractor, other than areas to be graded under this Contract, shall be cultivated, regraded, top-dressed, seeded and/or sodded as the situation requires or as directed to repair the damage and re-establish the condition prior to construction as directed by the Engineer and at the Contractor's expense.

#### 5.11.11 MAINTENANCE

The Contractor will be responsible for maintenance for a period of 1 year after planting at which time the grass must be growing to the satisfaction of the Engineer. The Contractor shall be responsible for mowing all seeded areas during turf establishment period in order to manage weed growth. Seeded areas shall be mowed 2 times to a height of 3 to 4 inches. Mowing dates shall be at the discretion of the Engineer. Maintenance also includes fertilizing and reseeded as necessary to produce a completely established and acceptable stand of grass.

#### 5.11.12 MEASUREMENT AND PAYMENT

- a. All measurements and payments will be based upon completed and accepted work for those items listed in the Proposal. The payments listed below will be based on completed and accepted work and will be full compensation for all plant, labor, materials, equipment, tools, and incidental items necessary to complete the work.
  - 1. Hydroseeding: Hydroseeding will not be measured for payment but will be paid for at the contract lump sum price for "Hydroseeding". Contract unit price includes the costs for seed, mulch, soil preparation, and fertilizer.
  - 2. Fertilizing will not be measured for payment as a separate item but payment for this work will be incidental to "Hydroseeding."
  - 3. Maintenance of the seeded area will not be measured for payment as a separate item but shall be considered incidental to the bid item "Hydroseeding."
  - 4. Repair of Damage and restoration of disturbed areas will not be measured for payment as a separate item but shall be considered incidental to the bid item "Hydroseeding."

END OF SECTION

## SECTION 5.12

### INVASIVE SPECIES PREVENTION

#### 5.12.01 SCOPE

This section of the specifications covers the Best Management Practices (BMPs) for the prevention of noxious and invasive plants while furnishing all plant, labor, equipment, appliances, and materials in connection with performing all work in all areas as designated and shown in the plans under this Contract.

The State of Minnesota requires active steps to prevent or limit the introduction, establishment, and spreading of invasive species when working on or entering into state land. All parties involved in the project shall prevent invasive species from entering into or spreading within the project site by cleaning equipment prior to arriving at the project site and after completion of the project.

#### 5.12.02 METHODS OF CONSTRUCTION

- a. Minimize Soil Disturbance: With the ability of invasive plant species to rapidly colonize areas of disturbed soil, it is essential to minimize areas to be disturbed. The Contractor shall avoid creating soil conditions that promote weed growth and establishment. Soil disturbance shall be minimized wherever practical while keeping within the project scope and objectives. Seeding and mulching of disturbed areas shall take place as soon as possible to aid in the establishment of the desired species' over noxious weeds.
- b. Equipment Cleaning: If equipment, vehicles, gear, or clothing arrive at the project site with soil, aggregate material, mulch, vegetation (including seeds), or animals, it shall be cleaned by Contractor furnished tools or equipment (brush/broom, compressed air or pressure washer) at the staging area. The Contractor shall dispose of the material cleaned from the equipment and clothing at a location determined by the DNR Wildlife Area Manager. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

The Contractor shall ensure that all equipment and clothing used for work in infested waters has been adequately decontaminated for invasive species (ex. zebra mussels) prior to being used in non-infested waters. All equipment and clothing (waders, tracked vehicles, barges, boats, turbidity curtain, sheet pile, pumps, etc.) that comes in contact with any infested waters must be thoroughly decontaminated.

Equipment shall not be cleaned with herbicide chemicals.

- c. Weed Free Gravel, Rock, and Mulch: Prior to delivery of offsite materials such as rock, gravel, and mulch, the Contractor shall provide proof to the Owner that all materials are certified weed free.

Materials taken from within the project limits shall be exempt from this requirement.

5.12.03 MEASUREMENT AND PAYMENT

- a. All measurement and payment for compliance with weed control methods shall be incidental to completed and accepted work.

END OF SECTION

## SECTION 5.13

### TRAFFIC CONTROL

#### 5.13.01 SCOPE

This section of the specifications covers work related to furnishing, installing, maintaining, and removing all traffic control devices required to provide safe movement of traffic through the project at all times from commencement of the work until project acceptance.

#### 5.13.02 APPLICABLE STANDARDS

- a. All temporary traffic management shall conform to and be installed in accordance with the latest editions of the following:
  1. “Minnesota Manual on Uniform Traffic Control Devices” (MN MUTCD);
  2. “Minnesota Temporary Traffic Control Field Manual” (Field Manual);
  3. “Speed Limits in Work Zones Guidelines”;
  4. “Minnesota Flagging Handbook”;
  5. “MnDOT Standard Signs and Markings Manual”;
  6. All applicable MnDOT standard specifications

Manuals listed above may be found at: <http://www.dot.state.mn.us/trafficeng/publ/index.html>

#### 5.13.03 MATERIALS

- a. Temporary Signs and Devices
  1. Reflectorize all signs, paddles, and other traffic control devices including those used for daytime operations. Fabricate temporary rigid signs and devices with retroreflective sheeting material of the appropriate color listed on the Approved/Qualified Products List (APL/QPL) for either “Sheeting for Rigid Temporary Work Zone Signs, Delineators, and Markers (Type IX and XI)” or “Sheeting for Rigid Permanent Signs, Delineators, and Markers (Type IX and XI)”. The sheeting materials APL/QPL is located at the following link: <http://www.dot.state.mn.us/products/signing/sheeting.html>
  2. Inplace signs that still apply during temporary operations need no change in sign sheeting.
- b. Vehicle Conspicuity Tape
  1. The Approved Products List for “Conspicuity Vehicle Sheeting (Type VII)” is found at: <http://www.dot.state.mn.us/products/signing/sheeting.html>

c. Truck/Trailer Mounted Attenuators

1. The Approved Products List for “Mobile Crash Attenuators” is found at:  
<http://www.dot.state.mn.us/products/temporarytrafficcontrol/mobilecrashattenuators.html>

d. Drum Sheeting

1. On projects requiring drums per MnDOT Standard Plate no. 8000J (Channelizers – Type B), provide all drums with six-inch fluorescent orange and white sheeting material with no gap between sheeting layers.

e. Crashworthy Signs, Traffic Control Devices, and Ballast

1. Signs and traffic control devices must be crashworthy and meet the crash testing requirements of the AASHTO Manual for Assessing Safety Hardware 2016 (MASH-16). The Engineer may require a letter of compliance stating that all signs and traffic control devices comply with MASH-16 requirements. The Letter of Compliance must include drawings of the different signs and devices along with a copy of the FHWA issued Letter of Eligibility or MnDOT MASH Crashworthy Evaluation.
2. See MnDOT Technical Memorandum No. 19-03-T-01 for information and timelines on the allowable use of crashworthy devices tested under NCHRP-350.  
<http://techmemos.dot.state.mn/techmemo.aspx>
3. The approved ballast system for signs and devices mounted on temporary portable supports is sandbags, unless it is designed, crash tested, and approved for the specific device. Add a deicer during freezing conditions to prevent the sand from freezing. Place sandbags at the base of the sign or traffic control device. Do not use any ballast that causes a sign or traffic control device to become hazardous to motorists or workers.

#### 5.13.04 CONSTRUCTION REQUIREMENTS

a. Traffic Control Plan, Maintenance, and Inspection

1. Submit a proposed traffic control plan to the Engineer for acceptance if traffic control is not present in the plans or if the Contractor modifies the traffic control plan. Submit the proposed traffic control plan at least seven days before implementation. If Field Manual layouts are used, specify layout number(s) but do not submit the layouts from the Field Manual. Do not implement the proposed traffic control modification until accepted by the Engineer.
2. Immediately repair or replace all traffic control devices that become damaged, moved, or destroyed and all ballasts that are damaged, destroyed, or otherwise fail to stabilize the device.

3. Meet the traffic control device quality standards as required in the Field Manual. Immediately replace unacceptable traffic control devices. Signs that are dirty and result in a noticeable loss of reflectivity at night are considered unacceptable and must be cleaned or replaced. Respond promptly to any call from the Engineer concerning the notification of unacceptable traffic control devices.
4. Provide the names, addresses, and phone numbers of at least three individuals responsible for placing and maintaining traffic control devices to the Engineer at the Pre-Construction Conference. These individuals will be "on call" 24 hours per day, seven days per week during the times any temporary traffic control devices are in place.
5. Inspect all traffic control devices on a daily basis, including one nighttime inspection per week. Verify that the devices are placed in accordance with the traffic control plan, these specifications, and the MN MUTCD. Immediately correct discrepancies between the actual placement and the required placement. Respond immediately to any call from the Engineer concerning any request for improving or correcting traffic control devices.
6. Make a daily log of required inspections. This log must indicate the date and time any changes in the stages, phases, or portions go into effect. The log must identify the location and verify that the devices are placed as directed or corrected in accordance with the plan. The person making the inspection must sign the log and include the date and time of the entry. Provide copies of the inspection logs to the Engineer at the Engineer's request.

b. Traffic Control Signs and Devices

1. Roll-up signs are not allowed unless authorized by the Engineer.
2. Cover, modify, or remove all signs that are not consistent with traffic operations. Cover the entire sign or that part of the legend that is inappropriate. Sign covers must conform to the Typical Temporary Sign Covering Details Sheet found in the plan or at the following link: <http://www.dot.state.mn.us/trafficeng/workzone/wz-templates/pdf/layout%2020A.pdf>
3. Maintain street identification signage at all times. Signs may be installed on temporary supports if the permanent sign structures are affected by operations. This is necessary to maintain the 911 emergency system.
4. Post mount all signs that will remain in the same location for more than 30 consecutive days. This does not include portable signs which are set up and taken down at the beginning and end of each work shift.
5. When the proper location of a sign is on pavement, do not core through the surface. If there is a conflict with underground utilities, attempt to move the sign while maintaining its visibility to traffic. If it is not possible to drive posts into the

ground, mount signs on portable supports as approved by the Engineer.

6. When signs are removed, the sign posts and stub posts must also be removed from the right of way. Posts left in place for future use or removal at a later date must be properly delineated with tubular markers, flags, or other delineation as approved by the Engineer at no additional cost.
7. All in place signs and delineators that interfere with the Contractor's normal operation may be temporarily relocated by the Contractor at the direction of the Engineer. Store salvaged signs in such a manner as to protect the sign from scratching, fading, or other harmful effects until the signs are reinstalled. After completing work at each sign location, or at the direction of the Engineer, replace the signs as near to their original locations as possible or to a location designated by the Engineer. Reinstall sign structures according to the Type C & D Sign Structural Details Sheet located at the following link:  
<http://www.dot.state.mn.us/trafficeng/signing/plansheets/groundmounted.pdf>

Signs and structures damaged by the Contractor shall be replaced at the Contractor's expense.

c. Traffic Safety

1. Do not suspend material, equipment, tools, or personnel over lanes open to traffic.
2. Protect traffic and pedestrians from excavations, drop-offs, falling objects, splatter, or other potential construction hazards.
3. Do not store materials or equipment in the clear zone unless approved by the Engineer. If materials or equipment must be stored within the clear zone, protect with temporary barrier. If the Engineer agrees that temporary barrier is not practical, delineate with Type B channelizers.
4. Do not park vehicles or construction equipment in the clear zone or any location that obstructs traffic control devices. Workers are not allowed to park their private vehicles within the project limits unless approved by the Engineer.
5. Do not load or unload material or equipment on the shoulders of any roadway without a full shoulder closure using signs and channelizing devices shown on Layout 8 in the Field Manual.

d. High Visibility Apparel

1. During night work or low light conditions, all workers must wear high visibility Class E long pants and retro-reflective headgear in addition to the ANSI Class 2 or 3 vest, shirt, or jacket.
2. All high visibility apparel must be worn in the manner for which it was designed.

All apparel worn on the torso must be closed in the front to provide 360 degree visibility. A worker's high-visibility apparel must be removed from service and replaced if it becomes faded, worn, torn, dirty, or defaced reducing the conspicuity of the apparel.

e. Night Work

1. Night work is not permitted on this project without prior approval of the Engineer.

f. Vehicle Warning Light Specification

1. All vehicles and equipment operating in the trunk highway right of way, must have operable warning lights that meet the appropriate SAE specification. The SAE specification requirements are as follows:
  - Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles- SAE Specification J845.
  - Directional Flashing Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles - SAE Specification J595.

Details on SAE Specification can be found at:  
<http://www.dot.state.mn.us/const/wzs/lighting.html>

g. Lane Closure Requirements

1. Temporary lane closures or other traffic restrictions by the Contractor will only be as approved by the Engineer. Request temporary lane closures at least 24 hours prior to such closures.

h. Truck/Trailer Mounted Attenuators (TMAs) For Mobile/Short Duration Operations

1. Truck/Trailer Mounted Attenuators (TMA) must be used on all shadow and protection vehicles operating totally or partially in a traffic lane if any temporary traffic control zone is defined as "Mobile/Short Duration" by the Field Manual. All references to "should" in the Field Manual in regards to TMA use for Mobile/Short Duration layouts are hereby changed to "shall". This requirement applies to all operations utilizing Field Manual layouts 9, 10, 12, 13, 36, 41, 49, 50, 51, 54, 55, 63, 76, 77, 78, and 79. Providing TMAs for "Mobile/Short Duration" work zones is incidental.

i. Flagging Operations

1. Flaggers must attend a training session taught by a MnDOT-Qualified Flagger Trainer. The trainer must have completed a "MnDOT Flagger Train the Trainer

Session” within the last five years and be on file as a qualified Trainer with MnDOT. Provide the Flagger Trainer’s name and qualification number at the pre-construction meeting. Provide all flaggers with the MnDOT Flagging Handbook. Flaggers must be in possession of the handbook while flagging on the Project. Furnish the signed “Checklist for Flagger Training” or “Flagger Qualification Card” to the Engineer any time a new flagger reports to work on the Project. The “Checklist for Flagger Training” and other forms and information is found at: <http://www.dot.state.mn.us/const/wzs/flagger.html>

2. All signs associated with the flagging operation must be removed or covered when flagging operations are not present.
  3. Coordinate the flagging operations in a manner that causes minimum delay to the traveling public. The maximum delay time is 10 minutes. If the operation exceeds the maximum delay time, the operation must be discontinued until a new traffic control plan is developed which meets the maximum delay requirement.
- j. Maintenance and Staging of Traffic Control
1. Maintain a minimum lane width of 10 feet on all roadways. Traffic must not be allowed or forced onto the shoulders without prior approval of the Engineer.
  2. Schedule construction operations to minimize traffic exposure to edge drop-offs. If these conditions cannot be avoided, provide and maintain the appropriate traffic control in accordance with the “DROP OFF GUIDELINES” in the Field Manual.

#### 5.13.05 MEASUREMENT AND PAYMENT

- a. All traffic control required to complete the project as shown in the plans and specified in these specifications will be considered incidental to other bid items. No additional measurement for payment will be made for individual activities and devices that constitute Traffic Control, except for other traffic control bid items specifically listed in the Contract.

END OF SECTION

## SECTION 5.14

### SITE ACCESS

#### 5.14.01 SCOPE

This section of the specifications covers the work related to furnishing all plant, labor, equipment, appliances, and materials and in performing all operations in connection with the installation of temporary entrances and placement of temporary aggregates for access as shown on the plans or as directed by the Engineer.

#### 5.14.02 APPLICABLE STANDARDS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. MnDOT Specification- When specifications of the Minnesota Department of Transportation are referred to this means the “Standard Specifications for Construction”, 2020 Edition by the Minnesota Department of Transportation.
  2. MnDOT Materials Specification – When specifications of the Minnesota Department of Transportation are referred to this means the “Materials Lab Supplemental Specifications for Construction”, 2020 Edition by the Minnesota Department of Transportation.

#### 5.14.03 MATERIALS

- a. Fill Material: The suitability of fill material used for temporary entrances and temporary access shall be approved by the Engineer and meet MNDOT requirements.
- b. Drainage Structure: Drainage structures shall be suitable for use and approved by the Engineer. Minimum diameter of pipe will be determined by MNDOT. Pipe material shall be approved by the Engineer and meet MNDOT requirements.
- c. The Contractor is responsible for all equipment and trucking necessary to install temporary entrances and access.

#### 5.14.04 METHOD OF CONSTRUCTION

- a. This work shall consist of constructing any necessary temporary entrances for access.
- b. The fill surface shall be compacted until the surface is tightly bound and shows no undue rutting or displacement under the operation of the compacting equipment.

- c. Temporary entrances shall provide a radius sufficient to prevent vehicle tires from tracking off the entrance when entering or leaving site.
- d. A drainage structure shall be installed under temporary entrance to allow for proper drainage through the area. The contractor will be responsible for keeping drainage structures free of debris. Minimum diameter of pipe shall meet MNDOT requirements.
- e. The contractor is responsible for maintenance of access routes and temporary entrances until construction is complete. Access roads and entrances shall be removed completely after construction is complete.
- f. Contractor is responsible for restoring any disturbed areas due to site access. All damages including, but not limited to rutting, and damage to grass areas and existing parking areas shall be restored by the contractor to the condition of or exceeding the preconstruction conditions as determined by the Engineer. Areas within the road right-of-way shall be seeded with agricultural roadside seed mix (MNDOT Mixture 25-142).

#### 5.14.05 MEASUREMENT AND PAYMENT

- a. General: All required to complete site access as shown in the plans and specified in the specification will not be measured for separate payment but shall be considered incidental to other bid items. This includes but is not limited to the following work:
  - 1. Furnishing and installing temporary traffic control signage, barricades and other controls shall not be measured for separate payment but shall be considered incidental to other bid items.
  - 2. Aggregate/fill material used for constructing temporary entrances and access routes shall not be measured for separate payment but shall be considered incidental to other bid items.
  - 3. Drainage structures necessary to provide flow through temporary entrances shall not be measured for separate payment but shall be considered incidental to other bid items.
  - 4. Removal of temporary entrances and temporary access roads shall not be measured for separate payment but shall be considered incidental to other bid items.
  - 5. Restoration of disturbed areas due to site access will not be measured for separate payment but shall be considered incidental to other bid items.

END OF SECTION

## SECTION 5.15

### PLANTINGS

#### 5.15.01 SCOPE

The Contractor shall furnish all plant, labor, equipment, appliances and materials required in performing all operations in connection with installation and establishment of plantings which are shown on the drawings, included in these specifications, required to meet permit requirements, or as directed by the Engineer or representative in the field.

#### 5.15.02 APPLICABLE SPECIFICATIONS

- a. The latest editions of the standards listed below but referred to hereinafter by basic designation only, form a part of this section of the specifications.
  1. The 2020 Edition of the Minnesota Department of Transportation "Standard Specifications for Construction" and the Supplemental Specifications

#### 5.15.03 MATERIALS

- a. Trees: Provide trees of quantity, size, genus, species and variety shown on the drawings, included in these specifications, or as directed by the Engineer.
- b. Wood Mulch Top Dressing: Wood Mulch top dressing shall be 4-inch depth, organic shredded cedar mulch free of deleterious materials, nitrogen stabilized and suitable for top-dressing of trees. Trees in lawn areas to have 4" depth by 5 ft. diameter wood mulch. Ensure that there is no lawn within the 5ft. mulch diameter. Submit sample of wood landscape mulch topdressing to Engineer for approval.
- c. Stakes: Stakes shall be steel and will be notched or drilled to retain guy wires. Steel post will be placed outside of planting pit. The Contractor shall be responsible for the removal of the stakes after the plant material has adjusted to its site condition (typically 1 full growing season). Contact the Engineer in advance for approval.
- d. Tree Trunk Protection: All deciduous trees shall have a polyethylene pipe installed for tree trunk protection.
- e. Other Materials: Provide all other material as required to complete the tree planting as shown on the drawings, included in these specifications, or as directed by the Engineer.
- f. All materials shall be new, first quality and approved by the Engineer.

#### 5.15.04 APPROVAL OF MATERIALS

- a. General: Ship plant materials with certificates of inspection required by governing

authorities. Comply with regulations applicable to plant materials. Do not make substitutions. If specified plant material is not obtainable, submit proof of non-availability to Engineer, together, with proposal for use of equivalent material.

- b. Analysis and Standards: Package standard products with manufacturer's certified analysis. For other materials, provide analysis by recognized laboratory made in accordance with methods established by the Association of Official Agriculture Chemists, where applicable.
- c. Trees: Provide trees of quantity, size, genus, species, and variety shown and scheduled for landscape work and complying with recommendations and requirements of ANSI Z60.1 "American Standards for Nursery Stock". Provide healthy, vigorous stock, grown in recognized nursery in accordance with good horticultural practice and free of disease, insects, eggs, larvae, and defects such as knots, sun-scald, injuries, abrasions, or disfigurement. Label at least one tree of each variety with a securely attached waterproof tag bearing legible designation of botanical and common name.
- d. Inspection: The Engineer may inspect trees either at place of growth or at site before planting, for compliance with requirements for genus, species, variety, size, and quality. Engineer retains right to further inspect trees of size and condition of balls and root systems, insects, injuries, and latent defects, and to reject unsatisfactory or defective material at any time during progress of work. Remove rejected trees or shrubs immediately from project site.

#### 5.15.05 SUBMITTALS

- a. Certification: Submit certificates of inspection as required by governmental authorities. Submit other data substantiating that materials comply with specified requirements.
- b. Planting Schedule: Submit planting schedule indicating anticipated dates for planting.

#### 5.15.06 CONSTRUCTION

- a. Preparation: Layout individual tree locations. Stake locations and secure Engineer's acceptance before start of planting work. Make minor adjustments as may be requested.
- b. Excavation: Excavate pits with vertical sides and with bottom of excavation slightly raised at center to provide proper drainage. Loosen hard subsoil in bottom of excavation. Scarify sides of pit. Pit width to be a minimum of twice the diameter of the root ball or as indicated by the Engineer.
- c. Container Removal: Remove containers with proper tools being careful to keep rootball intact.
- d. Planting: Coordinate layout of plants with the Engineer for inspection and approval prior to planting. Set trees with first flare at or slightly above grade. Top of first flare root

should be visible during inspection. Set plumb and faced for best appearance. Set crown level or slightly above surrounding grade, or as indicated by the Engineer.

- e. Backfilling: Surface soil will be suitable for placement as top 12 inches around sides of rootball. Backfill below this depth should not contain organic soil amendment and can be comprised of un-amended, pulverized soil. Neatly trim all broken and frayed roots. Flood plant pit when half back filled and allow to drain. Complete backfilling. Tamp as necessary but do not over compact.
- f. Muddle Ring: Construct 4-6" diameter by 2" high soil muddle ring.
- g. Watering: Thoroughly water plants immediately after planting.
- h. Mulch Pits and Planted Areas: Provide not less than 4" thickness of mulch in tree pits. The thickness of mulch shall have a finish level with adjacent finish grades. Keep mulch material away from base of trees.
- i. Stakes: Stake trees immediately after planting. Imbed stakes a minimum of 18" into undisturbed subsoil. Loop strap around trunk and tie to stake.

#### 5.15.07 MAINTENANCE

- a. Begin maintenance immediately after planting. Maintenance period will begin upon final completion of all planting areas with a written notice from the Contractor to the Engineer indicating substantial completion.
- b. Maintain trees until final acceptance but in no case less than the following period:

##### **1-year after substantial completion of tree planting.**

Maintain trees by pruning, cultivating, weeding, watering, and as required for healthy growth. Restore planting saucers. Tighten and repair stake supports and reset trees and shrubs to proper grade or vertical position as required. Apply pesticides only as required to keep trees free of insects and disease. Adjust watering as weather dictates for optimum plant establishment. Do not over-water plantings.

#### 5.15.08 CLEANUP AND PROTECTION

- a. Cleanup: Cleanup of planting sites and work areas shall include the removal of excess earth or other waste materials during the progress of work.
- b. Protection: Protect planting work and materials from damage due to construction operations. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged planting work as directed.

#### 5.15.09 INSPECTION AND ACCEPTANCE

- a. Upon completion of planting work, including maintenance, Engineer will, upon request, make an inspection to determine acceptability.
- b. Where inspected planting work doesn't not comply with requirements, replace rejected work and continue specified maintenance until re-inspected by Engineer and found acceptable. Remove rejected plants and materials promptly from project site.

#### 5.15.10 MEASUREMENT AND PAYMENT

- a. All measurements and payments will be based on completed and accepted work for those items listed in the Proposal. The payments listed below will based on completed and accepted work and will be full compensation for all plant, labor, materials, equipment, tools, and incidental items necessary to complete the work.
  1. Balsam Fir Tree (2" to 3" Diameter): Balsam Fir Tree will be measured in units of each (EA). Contract unit price includes the costs of delivery, installation, and maintenance of the tree. Payment will be made at the contract unit price under the bid item "Balsam Fir Tree (2" to 3" Diameter)" for each tree installed.
  2. Sugar Maple Tree (2" to 3" Diameter): Sugar Maple Tree will be measured in units of each (EA). Contract unit price includes the costs of delivery, installation, and maintenance of the tree. Payment will be made at the contract unit price under the bid item "Sugar Maple Tree (2" to 3" Diameter)" for each tree installed.
  3. Bitternut Hickory Tree (2" to 3" Diameter): Bitternut Hickory Tree will be measured in units of each (EA). Contract unit price includes the costs of delivery, installation, and maintenance of the tree. Payment will be made at the contract unit price under the bid item "Bitternut Hickory Tree (2" to 3" Diameter)" for each tree installed.
  4. Canada Plum Tree (2" to 3" Diameter): Canada Plum Tree will be measured in units of each (EA). Contract unit price includes the costs of delivery, installation, and maintenance of the tree. Payment will be made at the contract unit price under the bid item "Canada Plum Tree (2" to 3" Diameter)" for each tree installed.
  5. Prairie Crabapple Tree (2" to 3" Diameter): Prairie Crabapple Tree will be measured in units of each (EA). Contract unit price includes the costs of delivery, installation, and maintenance of the tree. Payment will be made at the contract unit price under the bid item "Prairie Crabapple Tree (2" to 3" Diameter)" for each tree installed.

END OF SECTION

## **PART 6**

### **PLANS (BOUND SEPARATELY)**