

**CONTRACT DOCUMENTS  
FOR CONSTRUCTION OF**

**WATER SERVICES RELOCATION – PW202602  
CITY OF ALAMO HEIGHTS, TEXAS  
CAPITAL IMPROVEMENTS PROJECT**



**February 2026  
ISSUED FOR BID MARCH 27, 2026  
AT 2:00 PM (CST)**



**TBPE FIRM NO. F-10053  
8918 Tesoro Drive, Suite 401  
San Antonio, Texas 78217  
Phone: 210-822-2232**

**00 01 07      DESIGN PROFESSIONAL SEALS**

 <p>02/10/2026</p>	<b>Specification Sections Sealed</b>
	See Sheet 3 of Complete Plan Set for individual specifications.
<b>Ardurra Group Inc. Texas Registered Engineering Firm # F-10053</b>	

**END OF SECTION**

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- 1) THE REFERENCED TECHNICAL SPECIFICATIONS ARE THE "CITY OF SAN ANTONIO STANDARD SPECIFICATIONS FOR CONSTRUCTION, JUNE 2008". REFERENCE TO THIS DOCUMENT SHALL APPLY AS IF THE ENTIRE SPECIFICATION WAS REPRODUCED HEREIN. APPLICABLE MODIFICATIONS TO THIS DOCUMENT, IF ANY, AND ADDITIONAL SPECIFICATIONS ARE PROVIDED HEREIN.
  
- 2) THE REFERENCED TECHNICAL SPECIFICATIONS ARE THE SAWS CONSTRUCTION SPECIFICATIONS UPDATED FEBRUARY 1, 2021. REFERENCE TO THIS DOCUMENT SHALL APPLY AS IF THE ENTIRE SPECIFICATION WAS REPRODUCED HEREIN. APPLICABLE MODIFICATIONS TO THIS DOCUMENT, IF ANY, AND ADDITIONAL SPECIFICATIONS ARE PROVIDED HEREIN.

**END OF SECTION**

## 00 11 16 INVITATION TO BID

### ARTICLE 1 – GENERAL NOTICE

- 1.01 The **City of Alamo Heights** (Owner) is requesting Bids for the construction of the following Project:  
**Water Services Relocation – PW202602**
- 1.02 Description of the Work
- A. The City of Alamo Heights seeks to relocate the water services for 351 homes in the City. The existing water main and existing water meters are in the back of the homes along the alleys. A new water main has been installed along the streets and new water meters have been installed. The water service will be relocated by extending from the front of the lot to the rear of the yard through jack and bore operations, then with jack and bore or open cut the water service will be extended across the lot to the existing meter. The existing water meter will be removed, and the water services will be tied into the homes’ service lines before the private cutoff valve. Once construction is complete, the yard will be restored to the existing condition. All work for the water relocation and its incidentals will be paid for under SAWS Specification 823.**
- The water line relocation cannot be placed under any structures such as homes, permanent storage, guest homes, swimming pools, retaining walls, etc. The layouts provided show approximate locations of the water service relocation, but final proposed locations will be coordinated with the City’s Public Works Department and the City Engineer.**
- 1.03 The Project is to be substantially complete and ready for operation before seventy-five (75) calendar days after issuance of the Notice to Proceed, subject only to extensions of Contract Time expressly authorized in writing in accordance with the Contract Documents. Final Completion of the Project, including completion of all punch-list items and submission of all closeout documentation required under the Contract Documents, shall occur no later than thirty (30) calendar days after the date established for Substantial Completion. Upon Final Completion and satisfaction of all contractual requirements, the Project shall be eligible for final payment.

### ARTICLE 2 – EXAMINATION AND PURCHASE OF DOCUMENTS

- 2.01 Advertisement and bidding information for the Project can be found at the following procurement website:  
[www.civcastusa.com](http://www.civcastusa.com)
- 2.02 Prospective Offerors must register with the procurement website as a plan holder, even if the Contract Documents are obtained from a plan room or other site. All official notifications, Addenda, and other documents will be offered only through the procurement website.
- 2.03 The Contract Documents may be downloaded from the procurement website by prospective Offerors registered as plan holders. Offerors are responsible for ensuring that a complete set of documents, as defined in Section 00 52 13 “Agreement,” are used in the preparation of their Bids. The documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download does not confer a license or grant permission or authorization for any other use. Authorization to download documents includes the right for Offerors to print documents for their sole use, provided they pay all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

2.04 The procurement website will be updated periodically with Addenda, lists of interested parties, reports, or other information relevant to submitting a Bid for the Project.

2.05 Printed copies of the Contract Documents, Technical Data, and other information may be examined free of charge at the following address:

**Alamo Heights City Hall**

**6116 Broadway**

**Alamo Heights, TX 78209**

Hours Available for Viewing: **8:00a-5:00p M-F**

### **ARTICLE 3 – PRE-BID CONFERENCE**

3.01 A **non-mandatory** pre-bid conference for the Project will be held on **March 17, 2026, at 2:00 PM (CST)** at the following location:

**Alamo Heights City Hall**

**6116 Broadway**

**Alamo Heights, TX 78209**

### **ARTICLE 4 – QUESTIONS REGARDING BIDDING PROCESS OR SOLICITATION DOCUMENTS**

4.01 Questions are to be submitted using the question-and-answer process on the procurement website. Responses to questions posted on the procurement website will be posted for the benefit of all Offerors. A response will be posted for questions submitted no later than **5:00 PM (CST) on March 19, 2026.**

4.02 A response to a question posted on the procurement website that requires modification of the Contract Documents will be made by Addenda. Modifications to the Contract Documents prior to the award of the Contract can only be made by Addenda. Only answers in Addenda posted on the procurement website will be binding. Oral and other interpretations or clarifications will be without legal effect.

### **ARTICLE 5 – BID SECURITY**

5.01 Offerors must submit an acceptable Bid Security with their Bids as a guarantee that the Successful Offeror will enter into a contract for the Project with the Owner within fifteen (15) calendar days of Notice of Award of the Contract. The Bid Security must be payable to **City of Alamo Heights** in the amount of five percent (5%) of the Bid Price. The Successful Offeror must execute the Contract and bonds on the forms provided in the Contract Documents and provide evidence of insurance as required by the Contract Documents.

5.02 Bid Security shall be in the amount of five percent (5%) of the Bid price and may be submitted in the form of a bid bond on the form provided in Section 00 43 13 “Bid Bond” , cashier’s check, or certified check payable to the City of Alamo Heights. Any bid bond must be issued by a surety authorized to do business in Texas and must reference the Owner and Project by name

## ARTICLE 6 – DELIVERY OF BIDS

6.01 Sealed Bids must be delivered to the Owner at the address below no later than **2:00 PM (CST) on March 27, 2026**, to be accepted. The Bids will be publicly opened and read aloud at **Alamo Heights City Hall, 6116 Broadway, Alamo Heights, TX, 78209**, at this time including the names of the Offerors and their Bids. Bids received after this time will be returned unopened. Address Bids to the Owner as follows:

**City of Alamo Heights**  
**Attention: Elsa T. Robles, City Secretary**  
**Bid – Water Services Relocation – PW202602**  
**6116 Broadway**  
**Alamo Heights, TX 78209**

## ARTICLE 7 – AWARD OF CONTRACT

7.01 It is the intent of the Owner to award this Contract to the lowest responsible Offeror whose Bid is determined by the Owner, in its sole judgment to be in the best value of the Owner and in accordance with applicable Texas law. The Owner reserves the right to determine responsiveness and responsibility, to adopt the most advantageous interpretation of the Bids submitted in the case of ambiguity or lack of clearness in stating bid prices or other material terms, to request clarification of any Bid, to reject any or all Bids, to re-advertise for Bids, and/or waive formalities. Bids will remain subject to acceptance and may not be withdrawn within sixty (**60**) calendar days from the date on which Bids are opened. Any attempted withdrawal during such period may result in forfeiture of the Bid security.

The Owner shall have no liability to any Offeror for costs incurred in the preparation, submission, clarification, negotiation, or protest of a Bid, and the submission of a Bid constitutes agreement to this limitation.

The award is subject to approval by the Owner's governing body, the City Council of Alamo Heights, Texas, and execution of a written contract acceptable to the Owner.

## ARTICLE 8 – OTHER CONTRACT REQUIREMENTS

8.01 Selected Contractor will be required to pay the prevailing wage rates established for this Project in accordance with the Contract Documents and Tex. Gov't Code Chapter 2258.

8.02 Performance and payment bonds will be required for this Project.

8.03 Successful Contractor will be required to certify:

- That it provides workers' compensation insurance coverage for all employees employed on this Project pursuant to Tex. Lab. Code Sections 401 and 406.096(a). As required by Section 406.096(b) of same Code, Contractor must require each Subcontractor provide a certificate of insurance to the Contractor confirming that the Subcontractor provides workers' compensation insurance coverage for all of the employees it employs on this Project;
- it is not debarred from doing business with the State of Texas or the federal government;

- that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of any resulting Contract;
- it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.
- it does not boycott energy companies, and will not boycott energy companies during the term of the Agreement.
- it (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate against a firearm entity or fire-arm trade association during the term of the Agreement.
- it is not (i) owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (ii) headquartered in China, Iran, North Korea, Russia or a designated country.

8.04 Disclosure of Conflicts of Interest: Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any Respondent or person considering doing business with a local government entity disclose the Respondent or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at <https://www.ethics.state.tx.us/> Any completed Conflict of Interest Questionnaires shall be submitted to the City. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the Respondent's offer.

**END OF SECTION**

## **00 21 13        INSTRUCTIONS TO OFFERORS**

### **ARTICLE 1 – DEFINED TERMS**

- 1.01    The terms used in these Instructions to Offerors have the meanings assigned to them in the General Conditions and Supplementary Conditions.

### **ARTICLE 2 – RECEIPT OF BIDS**

- 2.01    Refer to Section 00 11 16 “Invitation to Bid” for information on receipt of Bids.

### **ARTICLE 3 – COPIES OF CONTRACT DOCUMENTS**

- 3.01    Obtain a complete set of the Contract Documents as indicated in Section 00 52 13 “Agreement.”
- 3.02    Use complete sets of Contract Documents in preparing Bids. Offeror assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.
- 3.03    Owner makes copies of Contract Documents available for the sole purpose of obtaining Bids for completion of the Project and does not confer a license or grant permission or authorization for any other use.

### **ARTICLE 4 – QUALIFICATIONS STATEMENT**

- 4.01    Submit information as required in Section 00 45 13 “Qualifications Statement” within 5 days of the date Bids are due if requested to do so by the Owner for Owner’s evaluation of Bidders responsibility.

### **ARTICLE 5 – EXAMINATION OF THE CONTRACT DOCUMENTS AND THE SITE**

- 5.01    Examine the Contract Documents, the Site, and other information readily available before submitting a Bid.
- A.    Examine the Contract Documents and supplemental data:
1.    Carefully study the Contract Documents.
  2.    Carefully study supplemental information, including Technical Data, record drawings from previous projects, available utility maps, reports, and studies referenced or made available to the Offeror.
  3.    Promptly notify the Construction Manager of all conflicts, errors, ambiguities, or discrepancies that the Offeror discovers in the Contract Documents, Addenda, and supplemental information.
  4.    Determine that the Contract Documents, Addenda, and supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work to the degree necessary to prepare a Bid for the Project.
  5.    Make observations and investigations, correlate knowledge and observations with the requirements of the Contract Documents and consider these in preparation of a Bid for the Project.

- B. Become familiar with all federal, state, and local Laws and Regulations that may affect cost, progress, or the completion of Work.
- C. Visit the Site to become familiar with any general, local, or Site conditions that may affect the cost, progress, or performance of the Work in any manner. The Site is generally accessible to the public. Coordinate access to private property through the Owner. A tour of the Site will be conducted at the pre-bid conference.
- D. Subsurface exploration is not required; however, Offeror may perform non-destructive and publicly accessible investigations at Offeror's expense, provided no disturbance of public or private property occurs without Owner approval..
- E. The submission of a Bid will constitute an incontrovertible representation by the Offeror that the Offeror has complied with every requirement of this Article, and that without exception the Bid is premised on the following:
  - 1. Work will be completed in accordance with the Contract Documents for the Contract Price within the Contract Times;
  - 2. Offeror has given the Construction Manager written notice of all conflicts, errors, ambiguities, and discrepancies that the Offeror has discovered in the Contract Documents, Addenda, and the related supplemental data;
  - 3. Written resolutions provided by the Construction Manager are acceptable to the Offeror; and
  - 4. Contract Documents, Addenda, and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work.
  - 5. Offeror acknowledges that, except as expressly stated in the Contract Documents, Owner makes no representation or warranty regarding the accuracy, completeness, or suitability of any technical data, subsurface information, record drawings, utility locations, or other information made available to Offerors, and Offeror assumes all risk of interpretation and reliance thereon.

#### **ARTICLE 6 – PRE-BID CONFERENCE**

- 6.01 A non-mandatory pre-bid conference will be held at the time and location indicated in Section 00 11 16 "Invitation to Bid."

#### **ARTICLE 7 – INTERPRETATIONS AND ALTERNATE BIDS**

- 7.01 Submit all questions about the meaning or intent of the Contract Documents, Addenda, and the related supplemental data to the Construction Manager using the procurement website as indicated in Section 00 11 16 "Invitation to Bid."
- 7.02 Submit any offer of alternate terms and conditions or offer of Work not in strict compliance with the Contract Documents to the Construction Manager no later than 10 days after the date Project is advertised. Construction Manager and Design Professional will issue Addenda as appropriate if any of the proposed changes to the Contract Documents are accepted. A Bid submitted with clarifications or taking exceptions to the Contract Documents, except as modified by Addenda, will be considered non-responsive.

7.03 Offeror may submit a separate and additional Bid if the Offeror includes exceptions or the Offeror wishes to make a Bid that is not in accordance with the terms and conditions of the Contract Documents, or for Work that is not in strict compliance with the Contract Documents. Describe the intent and substance of the changes in the additional Bid in adequate detail so they are clearly understood. Alternate Bids will not be considered in the evaluation of the Bids. Upon selection of the Bid of the lowest responsible Offeror, and after the award of the Contract, the Construction Manager may issue a Request for a Change Proposal if Owner chooses to accept any Bid alternates.

7.04 Addenda may be issued to clarify, correct, or change the Contract Documents, Addenda, or the related supplemental data as deemed advisable by the Owner or Designer.

#### **ARTICLE 8 – BID SECURITY**

8.01 Offerors must submit an acceptable bid bond as Bid Security with their Bids as required by Section 00 11 16 “Invitation to Bid.” The acceptable bid bond must be issued by a surety legally authorized to do business in Texas and meet the requirements of the General Conditions.

8.02 Owner may annul the Notice of Award and retain the Bid Security of the apparent Successful Offeror upon Offeror’s failure to execute and deliver the Agreement or Amendments to the Agreement.

#### **ARTICLE 9 – CONTRACT TIMES**

9.01 See applicable provisions for Contract Times in the Agreement.

9.02 The Project must be completed no later than the dates indicated in Section 00 11 16 “Invitation to Bid.” Offeror is to enter in the number of days proposed to Substantially Complete the Project and to complete the Work required for final payment in accordance with the General Conditions in **Section 00 41 16 “Bid Form Exhibit A.** These dates will be used to calculate the Substantial Completion and Final Completion dates from the date of the Notice to Proceed and will be used to define the Contract Times. Liquidated damages as defined in the Agreement will start to accrue after these dates.

#### **ARTICLE 10 – LIQUIDATED DAMAGES, RETAINAGE, AND INTEREST**

10.01 Provisions for liquidated damages and the payment of retainage and interest are set forth in the Agreement.

#### **ARTICLE 11 – PREPARATION OF THE BID FORM**

11.01 The Bid Form is included with the Contract Documents and is also available at the procurement website. Complete all blanks on the Bid Form by typing or printing in ink. Indicate prices for each item or alternate shown in the Bid Form.

11.02 The unit price governs if a conflict exists between the extended amount derived by multiplying the unit price by the stated quantity of units and the extended amount shown in the Bid Form.

11.03 Execute the Bid Form as indicated in the document and include evidence of authority to sign.

11.04 Acknowledge receipt of all Addenda by filling in the number and date of each Addendum. Provide a signature as indicated to verify that the Addenda were received. A Bid that does not acknowledge the receipt of all Addenda may be considered non-responsive.

- 11.05 Provide the name, address, and telephone number of the individual to be contacted for any communications regarding the Bid in the Bid Form.
- 11.06 Provide evidence of the Offeror's authority and qualification to do business in Texas or agree to obtain such qualification prior to award of the Contract. Failure to obtain this qualification will render the Bid non-responsive and Offeror will forfeit its Bid Security.

## **ARTICLE 12 – CONFIDENTIALITY OF BID INFORMATION**

- 12.01 The Owner is a governmental body subject to the limitation of Tex. Gov't Code Chapter 552 and has limited obligations with regard to protecting confidential information submitted by Offerors. Bids will be opened in a manner that avoids disclosure of trade secrets and confidential information to competing Offerors and keeps the Bids from the public until a contract is awarded. The Owner will protect trade secrets and confidential information to the extent allowed by Laws and Regulations.
- 12.02 Clearly indicate which specific documents are considered to be trade secrets or confidential information by stamping or watermarking all such documents with the word "confidential" prominently on each page or sheet or on the cover of bound documents. Place "confidential" stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document. Submit all confidential information in a different binder so this confidential material is separate from the rest of the Bid.
- 12.03 The Owner, upon receiving an application or other request for the disclosure of confidential information, will promptly notify Offeror of the request as required by Section 552.305 and request a ruling by the Texas Attorney General as to whether any such information may be released.
- 12.04 Offeror acknowledges and agrees that it will be solely responsible for submitting any arguments, authorities, or other information to the Attorney General of Texas regarding release of the information marked as confidential as provided by Section 552.305(b) and that if disclosure is required, the Owner has no liability for releasing this information and Offeror will not be entitled to exercise any remedy for a disclosure made pursuant to the Chapter 552.
- 12.05 The obligations of the Owner as recipient with respect to confidential information under the terms of this Agreement are subject to the following exceptions:
  - A. If confidential information becomes a part of the public domain through publication or otherwise but through no fault of the Owner;
  - B. Owner can demonstrate through suitable documentation that the confidential information was already in the Owner's possession or otherwise publicly available prior to the date of disclosure hereunder;
  - C. The confidential information is subsequently disclosed to the Owner by a third party who has a lawful right to disclose such information; or
  - D. The Owner is required to disclose the confidential information by court order or by applicable law.
- 12.06 If the Owner is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, including requests under Chapter 552, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this

Agreement, the Owner will provide Offeror with prompt notice of this request so that it may seek an appropriate protective order or other appropriate remedy.

#### **ARTICLE 13 – DELIVERY OF BIDS**

- 13.01 Complete and deliver the Bid Form along with all required documents identified in the Bid Form.
- 13.02 Submit the Bid no later than the date and time prescribed and at the place indicated in Section 00 11 16 “Invitation to Bid.” Enclose the Bid in an opaque sealed envelope plainly marked with the Project name and the name and address of the Offeror, along with the Bid Security and other required documents. Enclose the sealed envelope containing the Bid in a separate envelope plainly marked on the outside with the notation “BID ENCLOSED” if the Bid is sent by mail or other delivery system. Address the outer envelope to the mailing address shown in Section 00 11 16 “Invitation to Bid.” Offeror assumes full responsibility for ensuring that the Bid arrives at the prescribed location before the prescribed time.

#### **ARTICLE 14 – MODIFICATION OR WITHDRAWAL OF BIDS**

- 14.01 Modify or withdraw a Bid using a document executed in the same manner that a Bid must be executed. Deliver the document to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 14.02 An Offeror may withdraw its Bid within 24 hours after Bids are opened if the Offeror files a signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial clerical mistake in the preparation of its Bid and not a judgmental or pricing error. The Bid Security will be returned if it is clearly demonstrated to the Owner that there was a material and substantial mistake in its Bid. An Offeror that requests to withdraw its Bid under these conditions may be disqualified from responding to a reissued Invitation to Bid for the Work to be furnished under these Contract Documents.

#### **ARTICLE 15 – OPENING OF BIDS**

- 15.01 Bids will be opened at the time and place indicated in Section 00 11 16 “Invitation to Bid.” The Owner will publicly acknowledge receipt of Bids received in time to be considered and then open and read aloud the names of the Offerors and the amount bid as required by applicable Laws and Regulations.

#### **ARTICLE 16 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 16.01 All Bids will remain subject to acceptance for the number of days specified in Section 00 11 16 “Invitation to Bid.” The Owner may, at its sole discretion, release any Bid and return the Bid Security prior to the end of this period.

#### **ARTICLE 17 – EVALUATION OF BIDS**

- 17.01 The Owner will consider the proposed Contract Price and Contract Times and the responsibility of the Offerors to determine the lowest responsible Offeror.

- 17.02 Owner may conduct such investigations as it deems necessary to establish the responsibility and financial ability of consultants, individuals, or entities proposed to furnish parts of the Work in accordance with the Contract Documents.
- 17.03 Each Offeror agrees to waive any claim it has or may have against the members of the OPT and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any Bid.
- 17.04 Notwithstanding any other provision of the Contract Documents, it is stipulated and agreed that by accepting a Bid, nothing in the Contract Documents shall be construed as a waiver of Owner's governmental immunity.

#### **ARTICLE 18 – AWARD OF CONTRACT**

- 18.01 Owner reserves the right to reject any and all Bids, including non-conforming, non-responsive, or conditional Bids. The Owner may also reject the Bid of any Offeror if the Owner believes that it would not be in the best interest of the Owner to make an award to that Offeror. The Owner reserves the right to waive all formalities.
- 18.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered, except as additional Bids in accordance with Article [7]. Reasonable grounds for believing that any Offeror has an interest in more than one Bid for the Work will be cause for disqualification of that Offeror and the rejection of all Bids in which that Offeror has an interest.
- 18.03 The Contract will be awarded to the lowest responsible Offeror if a contract is to be awarded.
- 18.04 Owner may consider the following in evaluating the Bids and awarding the Contract:
  - A. Offeror's responsibility and ability to demonstrate current capability to complete the Project in conformance with the requirements of the Contract Documents.
  - B. Compliance of the Bids with requirements of the Contract Documents.
  - C. Alternates and unit prices if requested in the bid forms.
  - D. The amount bid.
  - E. Proposed date of completion and the ability to meet intermediate Milestones that may have been established for the Project.

#### **ARTICLE 19 – BONDS AND INSURANCE**

- 19.01 The General Conditions set forth the Owner's requirements as to bonds and insurance. When the Successful Offeror delivers the executed Agreement to the Owner, it must be accompanied by the performance and payment bonds and required evidence of insurance.
- 19.02 Provide performance and payment bonds for this Project that fully comply with the provisions of Tex. Gov't Code Chapter 2253. Administration of these bonds will conform to Chapter 2253 and the provisions of the Contract Documents.

## **ARTICLE 20 – SIGNING OF THE AGREEMENT**

- 20.01 The Notice of Award to the Successful Offeror will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents that are identified in the Agreement. The Successful Offeror must sign and deliver the required number of counterparts of the Agreement and attached documents to the Owner within fifteen (15) calendar days. The Owner will deliver two fully signed counterparts to the Successful Offeror within ten (10) calendar days after receiving the signed documents from the Successful Offeror.
- 20.02 The Successful Offeror must also complete and submit a Certificate of Interested Parties (Form 1295) to the Owner as required by Tex. Gov't Code Chapter 2252 with the signed Agreement.

## **ARTICLE 21 – SALES AND USE TAXES**

- 21.01 The Owner generally qualifies as a tax-exempt agency as defined by the statutes of the State of Texas and is usually not subject to any local or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Offerors assume responsibility for including any applicable sales taxes in their Bids and for complying with all applicable statutes and rulings of the State of Texas Comptroller.
- 21.02 It is the Owner's intent to have this Contract qualify as a "separated contract." In order for this Contract to qualify:
- A. Obtain a sales tax permit from the State of Texas Comptroller if awarded this Contract.
  - B. Identify the dollar value of materials exempt from the sales tax. This information must be reported in Section 00 45 04 "State Sales Tax Requirements." Bids that do not include the information requested in this Section may be considered non-responsive.

## **ARTICLE 22 – WAGE RATES**

- 22.01 This Contract is subject to Tex. Gov't Code Chapter 2258 concerning payment of prevailing wage rates. Requirements for paying the prevailing wage rates are discussed in Section 00 73 43 "Wage Rate Requirements." A schedule listing the minimum wage rates for various classifications of laborers which have been established by the Owner for this Project are included in Section 00 73 46 "Wage Determination Schedule." Offerors will be required to pay at least the minimum wages shown on this list and comply with all applicable federal, state, and local Laws and Regulations related to the payment of prevailing wage rates.

**END OF SECTION**

**00 41 13 BID FORM**

1.01 Offeror submits this Bid to:  
**City of Alamo Heights**  
**6116 Broadway**  
**San Antonio, TX 78209**  
**Attention: Elsa T. Robles, City Secretary**  
**Water Services Relocation – PW202602**

**ARTICLE 2 – OFFEROR’S ACKNOWLEDGMENTS**

- 2.01 Offeror proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner on the form included in the Contract Documents and to perform all Work specified or indicated in Contract Documents for the Contract Price indicated in this Bid or as modified by Contract Amendment. Offeror agrees to complete the Work within the Contract Times established in the Agreement or as modified by Contract Amendment and comply with all terms and conditions of the Contract Documents.
- 2.02 Offeror accepts all terms and conditions of Section 00 11 16 “Invitation to Bid” and Section 00 21 13 “Instructions to Offerors.”
- 2.03 Offeror accepts the provisions of the Agreement as to liquidated damages in the event of its failure to complete Work in accordance with the schedule set forth in the Agreement.
- 2.04 Offeror acknowledges receipt of the following Addenda:

<b>Addendum No.</b>	<b>Addendum Date</b>	<b>Signature Acknowledging Receipt</b>

**ARTICLE 3 – OFFEROR’S REPRESENTATIONS**

- 3.01 Offeror has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, including Addenda.
- 3.02 Offeror has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- 3.03 Offeror is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.
- 3.04 Offeror has carefully studied the following Site-related reports and drawings as identified in the Supplementary Conditions:
  - A. Geotechnical Data Reports regarding subsurface conditions at or adjacent to the Site;
  - B. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;
  - C. Underground Facilities referenced in reports and drawings;

- D. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and
  - E. Technical Data related to each of these reports and drawings.
- 3.05 Offeror has considered the:
- A. Information known to the Offeror;
  - B. Information commonly known to contractors doing business in the locality of the Site;
  - C. Information and observations obtained from visits to the Site; and
  - D. The Contract Documents.
- 3.06 Offeror has considered the items identified in this Article with respect to the effect of such information, observations, and documents on:
- A. The cost, progress, and performance of the Work;
  - B. The means, methods, techniques, sequences, and procedures of construction to be employed by Offeror; and
  - C. Offeror's safety precautions and programs.
- 3.07 Offeror agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents based on the information and observations referred to in the preceding paragraphs.
- 3.08 Offeror is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 3.09 Offeror has correlated the information known to the Offeror, **information and observations obtained from visits to the Site**, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 3.10 Offeror has given the Construction Manager written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror has discovered in the Contract Documents, and the written resolution provided by the Construction Manager is acceptable to the Offeror.
- 3.11 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 3.12 Offeror's submittal of a Bid constitutes an incontrovertible representation that, without exception, all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### **ARTICLE 4 – BASIS OF OFFER**

- 4.01 Offeror will complete the Work in accordance with the Contract Documents at the unit prices shown in the attached in Section 00 41 16 "Bid Form Exhibit A":
- A. Extended amounts have been computed in accordance with the General Conditions.

- B. Offeror acknowledges that the estimated quantities are not guaranteed, and final payment for all unit price items will be based on actual quantities provided, measured as provided in the Contract Documents.
- C. Unit prices will be used to compute the actual Bid price.

#### **ARTICLE 5 – TIME OF COMPLETION**

- 5.01 Offeror agrees that the Work will be Substantially Complete and will be completed and ready for final payment in accordance with the General Conditions within the number of calendar days indicated in Section 00 41 16 “Bid Form Exhibit A.”

#### **ARTICLE 6 – ATTACHMENTS TO THIS BID**

- 6.01 The following documents are attached to and made a condition of this Bid:
  - A. Section 00 41 16 “Bid Form Exhibit A.”
  - B. Section 00 43 13 “Bid Bond.”
  - C. Section 00 45 01 “Nonresident Bidders.”
  - D. Section 00 45 02 “Non-Collusion Certification.”
  - E. Section 00 45 03 “Conflict of Interest Questionnaire.”
  - F. Section 00 45 04 “State Sales Tax Requirements.”

#### **ARTICLE 7 – VENUE**

- 7.01 Offeror agrees that venue will lie exclusively in **Bexar** County, Texas for any legal action.

**ARTICLE 8 – BID DELIVERY**

8.01 This Bid is submitted by:

Offeror:

\_\_\_\_\_  
*(typed or printed name of organization)*

Signature:

\_\_\_\_\_  
*(individual's signature)*

Name:

\_\_\_\_\_  
*(typed or printed)*

Title:

\_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

**END OF SECTION**

**00 41 16 Bid Form Exhibit A**

<b>Project:</b>	Water Services Relocation		<b>Project No.:</b>
<b>Owner:</b>	City of Alamo Heights		PW202602
<b>Design Professional:</b>	Ardurra Group Inc		
<b>Offeror:</b>			

Base Bid					
Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Amount
<b>Items in Base Bid (excluding Allowances) per Section 01 29 01 "Measurement and Basis for Payment"</b>					
100.1	MOBILIZATION	LS	1		
100.2	INSURANCE & BOND	LS	1		
101.1	PREPARING RIGHT OF WAY	LS	1		
530.0	BARRICADES, SIGNS & TRAFFIC HANDLING	LS	1		
540.0	EROSION AND SEDIMENT CONTROL	LS	1		
SAWS 823	2" HDPE DIRECTIONAL BORING CUSTOMER'S YARD PIPING	EA	351		
A	<b>Total Base Bid Items Amount (Sum of Extended Amounts for each Base Bid Line Item)</b>				\$

<b>BID SUBMITTED BY:</b>	
<b>Offeror:</b>	_____
<b>Signature:</b>	_____
<b>Printed Name:</b>	_____
<b>Title:</b>	_____
<b>Date:</b>	_____

**00 43 13      BID BOND**

<p><b>Offeror as Principal</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p><b>Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Owner</b></p> <p>Name: City of Alamo Heights</p> <p>Mailing address (principal place of business):</p> <p>6116 Broadway Alamo Heights, TX 78209</p>	<p>Physical address (principal place of business):</p> <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p><b>Contract</b></p> <p>Project name and number:</p> <p>Water Services Relocation – PW202602</p> <p>Bid/Proposal Due Date: March 27, 2026</p>	<p>Surety's state of incorporation:</p> <p><b><i>By submitting this bond, Surety affirms it is authorized to do business and licensed to execute bonds in the state where the Project is located.</i></b></p>
<p><b>Bond</b></p> <p>Contract Price Offered:</p> <p>Penal Sum of Bond:</p> <p>5% of Contract Price offered</p> <p>Date of Bond:</p>	<p><b>Local Agent for Surety</b></p> <p>Name:</p> <p>Company:</p> <p>Mailing address (principal place of business):</p> <p>Telephone (Main):</p>

***Surety and Offeror, intending to be legally bound by this bond, do each cause this bond to be duly executed on its behalf by its authorized officer, agent, or representative. Surety and Offeror bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if Owner accepts the Offeror's Bid or Proposal and Offeror delivers the executed Agreement and the required bonds and evidence of insurance within the time stipulated in the Bidding or Proposal Documents this obligation is null and void. Payment under this bond will be due and payable upon default by Offeror and within 30 days after receipt by Offeror and Surety of written notice of default from Owner. This Agreement shall be administered and interpreted under the laws of the state where the Project is located. Venue lies exclusively in Bexar County, Texas for any legal action.***

<b>Offeror as Principal</b>	<b>Surety</b>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
	<i>(Attach Power of Attorney)</i>

**END OF SECTION**

**00 45 01      NONRESIDENT BIDDERS**

Texas Government Code Chapter 2252 applies to the award of government contracts to nonresident bidders. This chapter provides that:

“a government entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lower bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located.”

“Nonresident bidder” refers to a person who is not a resident of Texas.

“Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Check the statement that is correct for Offeror:

- Offeror (includes parent company or majority owner) qualifies as a resident bidder whose principal place of business is in Texas.
  
- Offeror qualifies as a nonresident bidder whose principal place of business or residency is in the state of: \_\_\_\_\_

Any determination of state bidder preference law will be based on the Texas Comptroller’s annual summary of other state bidder preference laws.

Offeror: \_\_\_\_\_  
*(typed or printed name of organization)*

Signature: \_\_\_\_\_  
*(individual’s signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

**END OF SECTION**



<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor doing business with local governmental entity</b>		
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176 of the Local Government Code by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		<b>OFFICE USE ONLY</b>
		Date Received
<b>1</b>	<b>Name of vendor who has a business relationship with local governmental entity.</b>	
<b>2</b>	<input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
<b>3</b>	<b>Name of local government officer about whom the information is being disclosed.</b>	
<hr style="width: 50%; margin: auto;"/> Name of Officer		
<b>4</b>	<b>Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b>	
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? <input type="checkbox"/> Yes <input type="checkbox"/> No		
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>5</b>	<b>Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b>	
<b>6</b>	<input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1)	
<b>7</b>		
Signature of vendor doing business with the governmental entity		Date

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

**END OF SECTION**

**00 45 04 STATE SALES TAX REQUIREMENTS**

Comply with all applicable sales, excise, and use tax requirements of the Texas Tax Code. The Offeror hereby certifies that the Contract Price is divided as follows:

Tax exempt products, materials, and services (See Notes 1 and 2)	\$ _____
Taxable products, materials, and services (See Note 3)	\$ _____
Total (See Note 4)	\$ _____

Offeror: \_\_\_\_\_  
*(typed or printed name of organization)*

Signature: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

**Notes:**

1. Exempt products and materials are those items purchased for the Project which are physically incorporated into the facilities constructed for the Owner or are necessary and essential for the performance of the Work and are completely consumed at the Site. For purposes of this definition, products and materials are completely consumed if after being used once for its intended purpose it is used up or destroyed. Products and materials rented or leased for use in the performance of the Work cannot be completely consumed for the purposes of this definition.
2. Exempt services are those services performed at the Site where the Contract expressly requires the specific service to be provided or purchased by the person performing the Work or the service is integral to the performance of the Work.
3. Products, materials, and services are not tax exempt if they are used by the Contractor but are not physically incorporated into the Owner's facilities or are not consumed by construction as defined above. Machinery or equipment and its accessories and repair and replacement parts used in the performance of the Work are not exempt.
4. The total sum of the amount for tax exempt and taxable products, materials, and services must equal the Contract Price.

**END OF SECTION**

## **00 45 13      QUALIFICATIONS STATEMENT**

### **ARTICLE 1 – REQUIREMENTS FOR THE QUALIFICATIONS STATEMENT**

- 1.01 In order to assist the Owner in determining whether the Offeror is responsible, the Qualifications Statement must be submitted by the apparent low Offeror within 5 calendar days of the bid opening and include the information as described in this Section as a minimum. Failure to submit the required information in the Qualifications Statement may result in Owner considering the Bid non-responsive and may result in rejection of the Bid by Owner. Offerors may be required to provide supplemental information if requested by Owner to clarify, enhance, or supplement the information provided in the Qualifications Statement.
- 1.02 Offeror must provide the information requested in this Qualifications Statement using the forms attached to this Section. The information requested in these forms must be provided completely and in detail. Information that cannot be totally incorporated in the forms may be included as an appendix to the form. This appendix must be clearly referenced by appendix number on the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.
- 1.03 Offeror may provide supplemental information to the Qualifications Statement such as organizational brochures or other marketing information to help demonstrate their qualifications to Owner. This information may not be submitted as a substitute for the information specifically requested in this Section. The reference must include the specific paragraph or section that applies to that question or item if this information is included as an appendix to the information requested in Article 2.

### **ARTICLE 2 – INSTRUCTIONS FOR PREPARING THE QUALIFICATIONS STATEMENT**

- 2.01 Offeror's Organization and General Information:
  - A. Provide general information about the Offeror's organization using copies of Table 1. Provide the same information for each joint venture partner if the Offeror is a joint venture.
  - B. Provide information regarding the operational structure of the Offeror's organization, including a list of officers, the limits of authority for these individuals with regards to the proposed Project, documentation of authority to execute documents, and a copy of organizations' certificate of authorization to conduct business in the state the Project is located in. If the Project is located in a state that licenses contractors, Offeror must also provide documentation showing that the organization is licensed as a general contractor in that state, including any applicable classifications and limitations.
  - C. Financial Management:
    1. Provide the Offeror's most recent audited financial statement and the most recent financial statement if the most recent audited financial statement is more than 2 years old.

2. Provide the Offeror's financial summary information in Table 1, including the financial indicators from the Offeror's most recent financial statement using the formulas below:

Current Ratio:  $\text{Current Assets} \div \text{Current Liabilities}$

Quick Ratio:  $(\text{Cash and Cash Equivalents} + \text{Accounts Receivable} + \text{Short Term Investments}) \div \text{Current Liabilities}$

3. Describe the resources that are available to Offeror to provide adequate cash flow for the Project if the Offeror's Current Ratio or Quick Ratio are less than 1.0.

D. Safety:

1. Provide a narrative not to exceed four pages describing the Offeror's success in implementing an effective project site safety program. Provide a narrative describing the Offeror's safety program and a statement regarding the organization's commitment to safety. Do not provide copies of safety manuals or programs.
2. Provide Experience Modification Ratio (EMR) and Total Recordable Frequency Rate (TRFR) history for the last 3 years for Offeror and any proposed subcontractors that will provide Work valued at 25 percent or more of the Contract Price. Provide this information in Table 1.
  - a. Offeror's EMR is a computation by the insurance industry that compares a company's annual losses in workers' compensation insurance claims against its policy premiums over a three-year period, excluding the current year.
  - b. Offeror's TRFR is a calculation of a firm's total number of OSHA-recordable injuries and illnesses over a given period (usually a year), divided by the total number of personnel-hours worked.

- E. Claims Experience and Litigation History: Provide a list of all claims or litigation involving owners on other construction projects that have been active over the last 5 years or that are currently unresolved. Include this information in Table 1. Provide a narrative describing the issues being contested and when it is anticipated that the disputes will be resolved. Claims are to include only those items which have progressed through the change management process for the project and are being disputed by Offeror or the project owner.

- F. Past Experience with the Owner: Provide a list of projects that have been completed with Owner over the last 5 years. Include this information in Table 1. Provide a narrative not to exceed two pages describing how this experience will impact the performance of Offeror on this Project.

2.02 Project Experience:

- A. Provide a list of projects completed by Offeror in the last 5 years using copies of Table 2.
- B. Provide detailed descriptions of projects which demonstrate the experience of the Offeror's team with construction of similar projects. Experience must include, as a minimum, the satisfactory completion of at least five similar projects within the last 5 years. Offerors not

meeting the requirement for similar projects may be disqualified as being non-responsive. Similar projects must include:

1. **At least five (5) projects of similar scope and size within the last five years, including project manager and references.**

- C. Provide a narrative not to exceed two pages for each project describing up to five specific projects that qualify as similar projects. Projects selected must demonstrate the capabilities of Offeror.

2.03 Experience and Qualifications of Proposed Key Personnel:

- A. Provide a narrative not to exceed four pages describing the Offeror's project management structure and the qualifications of the project management team for this Project. Include an organization chart showing the relationship between Offeror and key subcontractors and suppliers.
- B. Provide information on the key personnel proposed for this Project on Tables 3 through 7. Key personnel include the project manager, project superintendent, safety manager, and quality control manager. Offeror may provide information on an alternate individual if it is not able to commit to one individual for the Project at the time the Bid is submitted. Qualifications of these individuals will be considered in evaluating the Offeror's qualifications. Offeror must commit to providing the services of the proposed key personnel or alternate for the life of the Project as a condition of qualification. Failure to provide the proposed key personnel may result in the disqualification of Offeror and will provide the basis for termination of the Contract at the discretion of Owner.
- C. Include a list of the current project assignments for each of the individuals proposed, the anticipated completion date for these assignments, and the percentage of the time they will have available to devote to this Project. The project superintendent must be dedicated to the Project full time for the duration of the Project. If any other key personnel are not devoted solely to the Project, indicate how time is to be divided between the Project and other assignments. Specifically address how and when individuals currently on other assignments will transition to the Project.
- D. Provide resumes not exceeding two pages for each individual proposed for the key personnel positions and their alternates. Resumes must describe the qualifications of the individual and include the following as a minimum: technical experience, managerial experience, education and formal training, primary language, and a work history which describes project experience, including the roles and responsibilities for each assignment. Additional information highlighting the experience which makes them the best candidate for the assignment should also be included. Focus on projects on which individuals proposed have had significant involvement in the last 5 years and which demonstrate experience with similar projects.
- E. Identify individuals that will fill one or more of these key roles and describe their ability to handle multiple responsibilities. Provide a written narrative describing the percentage of the time that will be devoted to each role and the qualifications to fulfill each role if an individual is to fulfill more than one of the key personnel roles.
- F. Provide a tabulation of the projects on which the key personnel have been personally involved using copies of Table 7. This tabulation is to include the name and a current telephone number for references for each of these project assignments.

- G. Provide a narrative not to exceed two pages for each project the proposed individuals have worked on that qualify as similar projects. Specifically identify the role and responsibilities of the individual on these similar projects. Projects selected must demonstrate the capabilities of the proposed key personnel.
  - H. Provide a narrative not to exceed ten pages to describe the overall performance of the individuals on these projects. This narrative may include references to letters of recommendation, project awards, and other references to demonstrate experience in constructing a project which meets the project owner’s expectations for a quality project constructed on time and within budget.
- 2.04 Offeror’s Ability to Complete Projects within the Contract Price and Contract Times:
- A. Provide a tabulation of budget performance on projects completed by Offeror within the last 5 years using copies of Table 8 to demonstrate the ability of the Offeror to complete projects for the Contract Price. Notes may be added to each line item to describe circumstances for change orders beyond the control of Offeror.
  - B. Provide a tabulation of all projects completed by Offeror within the last 5 years on Table 9 to demonstrate performance in completing projects on time. Notes may be added to the tabulations to indicate the reasons for not meeting original contract completion dates.

**ARTICLE 3 – BID REQUIREMENTS**

- 3.01 Provide the Qualifications Statement using the referenced tables and narrative descriptions as described in this Section. Pages are to be 8-1/2 x 11, with a minimum font size of 10. Provide a tab to separate materials responding to each of the rating categories listed in Article 2.
- 3.02 Additional information may be included in appendices attached to the Bid. Each appendix must reference the section of the criteria it is in reference to.
- 3.03 Provide one printed copy of the Bid at the time and place set forth in Section 00 11 16 “Invitation to Bid.” Provide a digital copy of the Bid in Portable Document Format (pdf) on a CD. This digital copy is to include all information required to evaluate the Bid.

**ARTICLE 4 – FORMS**

- 4.01 The following tables are attached to this Section:

Table	Description
1	General Information
2	Current Projects and Project Completed within the last 5 Years
3	Proposed Project Managers
4	Proposed Project Superintendents
5	Proposed Project Safety Managers
6	Proposed Project Quality Control Managers
7	Project Information for Key Personnel
8	Demonstration of Budget Performance
9	Demonstration of On-Time Performance

**ARTICLE 5 – CERTIFICATION**

5.01 By submitting this Qualifications Statement and related information, Offeror certifies that it has read this Qualifications Statement and that the Offeror’s responses are true and correct and contain no material misrepresentations, and that the individual signing below is authorized to make this certification on behalf of the Offeror’s organization.

Offeror: \_\_\_\_\_  
*(typed or printed name of organization)*

Signature: \_\_\_\_\_  
*(individual’s signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual’s signature)*

Designated Representative:

Name: \_\_\_\_\_

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

Address for giving notices:

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*(Attach evidence of authority to sign if Offeror is a corporation, partnership, or a joint venture.)*

**Table 1 - General Information**

<b>Organization</b>			
Legal Name of Business			
Form of Business Entity: <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership			
Date Business was formed		State under which Business was formed	
Is this Business authorized to operate in the Project location: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending			
Is this Business licensed as a general contractor in the Project location: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Pending <input type="checkbox"/> N/A			
List of companies, firms, or organizations that own any part of this Business.			
Name of company, firm, or organization.			Percent ownership
Principal Office			
Primary contact		Main telephone number	
Email address		Website address	
Business address of principal office			
Regional Office			
Primary contact		Main telephone number	
Email address		Website address	
Business address of regional office			
<b>Business History</b>			
List of names that this Business currently has or anticipates operating under over the history of the Business, including the names of related companies presently doing business.			
Names of organization		From date	To date
<b>Indicators of Organization Size</b>			
Average number of current full-time employees			
Average estimate of revenue for the current year			

**Table 1 - General Information Cont'd**

<b>Previous Contracting Experience</b>		
Years of experience in projects similar to the proposed Project:		
As a general contractor	As a joint venture partner	
Has this organization or a participating or predecessor organization ever been disqualified as a bidder by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Has this organization or a participating or predecessor organization ever been barred from contracting by any local, state, or federal agency within the last 5 years? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Has this organization or a participating or predecessor organization been released from a bid or proposal in the past 5 years? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Has this organization or a participating or predecessor organization ever defaulted on a project or failed to complete any contract awarded to it? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Has this organization or a participating or predecessor organization ever refused to construct or refused to provide materials defined in the contract documents or in a change order? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Is this organization or a participating or predecessor organization currently involved in any litigation or contemplating litigation? <input type="checkbox"/> Yes* <input type="checkbox"/> No		
Provide full details in a separate attachment for each statement above with a "yes" response above.		
<b>Previous History with Owner</b>		
List projects that have been completed with the Owner over the last 5 years. If more than 5 projects, list only the most recent.		
	Project Name	Year
1		
2		
3		
4		
5		
<b>Previous Claims History and Litigation Experience</b>		
List all claims or litigation involving owners on other construction projects that have been active over the last 5 years or that are currently unresolved.		
	Description of Claim or Litigation	Status
1		
2		
3		
4		
5		

**Table 1 - General Information Cont'd**

Surety								
Surety Name								
Mailing address (principal place of business):				Physical address (principal place of business):				
Telephone (main number)					Telephone (claims notices)			
Name of Local Agent for Surety								
Telephone					Email			
Surety is a corporation organized and existing under the laws of the state of								
Is surety authorized to provide surety bonds in the Project location? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Is surety listed in the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies")? <input type="checkbox"/> Yes <input type="checkbox"/> No								
Insurance								
Name of Insurance Provider								
Provider is a corporation organized and existing under the laws of the state of								
Is Provider licensed or authorized to issue insurance policies in the Project location?						<input type="checkbox"/> Yes <input type="checkbox"/> No		
Does Provider have an A.M. Best Rating of A-VIII or Better?						<input type="checkbox"/> Yes <input type="checkbox"/> No		
Mailing Address (principal place of business)								
Physical Address (principal place of business)								
Telephone (main number)								
Telephone (for notice of claims)								
Local Agent for Provider								
Address for Local Agent								
Telephone for Local Agent								
Construction Site Safety Experience								
Provide Offeror's Experience Modification Ratio (EMR) and Total Recordable Frequency Rate (TRFR) for the last 3 years and the EMR and TRFR history for the last 3 years of any proposed Subcontractor that will provide Work valued at 25% or more of the Contract Price.								
Year	Offeror		Subcontractor		Subcontractor		Subcontractor	
	EMR	TRFR	EMR	TRFR	EMR	TRFR	EMR	TRFR
1								
2								
3								

**Table 1 - General Information Cont'd**

Financial Summary Information for Offeror		
Date of Offeror's most current financial statement		
Date of Offeror's most current audited financial statement		
Financial indicators from the most current financial statement:		
Offeror's Current Ratio = Current Assets ÷ Current Liabilities		
Offeror's Quick Ratio = (Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities		
Describe the resources that are available to the Offeror to provide adequate cash flow for the Project if Offeror's Current Ratio or Quick Ratio are less than 1.0:		
Disadvantaged Business Certifications		
Name of Certification	Certifying Agency	Certification Date
<input type="checkbox"/> Disadvantage Business Enterprise		
<input type="checkbox"/> Minority Business Enterprise		
<input type="checkbox"/> Woman Business Enterprise		
<input type="checkbox"/> Disabled Veteran Owned Business		
<input type="checkbox"/> Historically Underutilized Business		
<input type="checkbox"/> Small Business Enterprise		
<input type="checkbox"/> Other		
<input type="checkbox"/> None		

**Table 2 - Current Projects and Project Completed within the last 5 Years**

Name of Organization					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					
Project Owner			Project Name		
General Description of Project					
Project Cost			Date Project Completed		
Key Project Personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager	
Name					
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/Position	Organization	Telephone	Email
Owner					
Designer					
Construction Manager					

**Table 3 - Proposed Project Managers**

Name of Organization			
<b>Primary Candidate</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
<b>Alternate Candidate</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

**Table 4 - Proposed Project Superintendents**

Name of Organization			
<b>Primary Candidate</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
<b>Alternate Candidate</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as project superintendent			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

**Table 5 - Proposed Project Safety Managers**

Name of Organization			
<b>Primary Candidate</b>			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as project safety manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
<b>Alternate Candidate</b>			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as project safety manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

**Table 6 - Proposed Project Quality Control Managers**

Name of Organization			
<b>Primary Candidate</b>			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality control manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	
<b>Alternate Candidate</b>			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality control manager			
Number of similar projects in other positions			
Current Project Assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference Contact Information (listing names indicates approval to contact named individuals as a reference)			
Name		Name	
Title/Position		Title/Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Role on project		Role on project	

**Table 7 - Project Information for Key Personnel**

Name of Organization															
<b>Provide information on all projects completed by the Organization within the last 5 years.</b>															
Project Owner					Project Name										
General Description of Project															
<b>Project Budget and Schedule Performance</b>															
Budget History		Amount		% of Bid Amount		Schedule Performance		Date		Days					
Original Contract Price						Notice to Proceed									
Change Orders						Contract Substantial Completion Date at Notice to Proceed									
Owner Enhancements						Contract Final Completion Date at Notice to Proceed									
Unforeseen Conditions						Change Order Authorized Substantial Completion Date									
Design Issues						Change Order Authorized Final Completion Date									
Total						Actual / Estimated Substantial Completion Date									
Final Cost						Actual / Estimated Final Completion Date									
<b>Key Project Personnel</b>															
				Project Manager		Project Superintendent		Safety Manager		Quality Control Manager					
Name															
Percentage of time devoted to the project															
Percentage of time proposed for this Project															
Did Individual start and complete the project?															
If not, who started or completed the project in their place?															
Reason for change?															
<b>Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)</b>															
		Name		Title/Position		Organization		Telephone		Email					
Owner															
Designer															
Construction Manager															
Surety															
<b>Issues / disputes resolved or pending resolution by arbitration, litigation or dispute review boards</b>															
Number of issues resolved				Total amount involved in resolved issues				Number of issues pending				Total amount involved in issues pending			

**Table 8 - Demonstration of Budget Performance**

Name of Offeror							
<b>Provide information on all projects completed by the Offeror within the last 5 years.</b>							
Owner Name	Project Description	Original Contract Price	Value of Change Orders			Total Change Orders	Percent of Changes to Original Contract Price
			Owner Enhancements	Unforeseen Conditions	Design Issues		
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							

**Table 9 - Demonstration of On-Time Performance**

Name of Organization							
<b>Provide information on all projects completed by the Organization within the last 5 years.</b>							
Owner Name	Project Description	Original Contract Date for Substantial Completion	Original Contract Date for Final Completion	Amended Contract Date for Substantial Completion	Amended Contract Date for Final Completion	Actual Contract Date for Substantial Completion	Actual Contract Date for Final Completion
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							
Notes:							

**END OF SECTION**

## 00 52 13      **AGREEMENT**

This Agreement is between City of Alamo Heights (Owner) and **[name of Contractor to be inserted at time of Contract execution]** (Contractor).

Owner and Contractor agree as follows:

### **ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is designated as follows:

**Water Services Relocation – PW202602**

### **ARTICLE 2 – DESIGN PROFESSIONAL**

2.01 The Design Professional for this Project is:

**Ardurra Group Inc  
8918 Tesoro Drive, Suite 401  
San Antonio, TX 78217**

### **ARTICLE 3 – CONSTRUCTION MANAGER**

3.01 The Construction Manager for this Project is:

**City of Alamo Heights Public Works Department  
6116 Broadway  
Alamo Heights, TX 78209**

### **ARTICLE 4 – CONTRACT TIMES**

4.01 *Time is of the Essence*

- A. All time limits for Substantial Completion, and completion readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- B. The Work is required to be substantially complete within seventy-five (**75**) days after the date when the Contract Times commence to run as provided in the General Conditions and complete and ready for final payment in accordance with the General Conditions within thirty (**30**) days after the date of Substantial Completion. Extensions of Contract Times, if any, may be granted only by written authorization issued in accordance with the Contract Documents.

4.02 Liquidated Damages

- A. Owner and Contractor recognize that the Contract Times specified Substantial Completion and Final Completion are of the essence in the Contract. Owner and Contractor recognize that the Owner will suffer financial loss if the Work is not completed within the Contract Times specified in this Agreement as may be adjusted in accordance with the General Conditions. Owner and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed within the Contract Times. Accordingly, instead of requiring

proof of the amount of these damages, Owner and Contractor agree that as liquidated damages for delay represent a reasonable forecast of actual damages and are not a penalty and are intended to be enforceable under Texas law.

1. Contractor agrees to pay Owner **\$500** for each day that expires after the time specified in this Agreement for Substantial Completion until the Work is substantially complete.
  2. Contractor agrees to pay Owner **\$500** for each day that expires after the time specified in this Agreement for Final Completion until the Work is completed and ready for final payment in accordance with the General Conditions.
- B. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.
- C. OPT will determine whether the Work has been completed within the Contract Times. Assessment of liquidated damages by the Owner does not waive the Owner's right to assess or collect additional damages which the Owner may sustain by the failure of the Contractor to perform in accordance with the terms of the Contract.

#### **ARTICLE 5 – CONTRACT PRICE**

5.01 Owner will pay Contractor for completion of the Work in accordance with the Contract Documents at the prices shown in this Agreement. The Contract Price has been computed in accordance with the General Conditions. Contractor acknowledges that for unit price items, estimated quantities are not guaranteed and are solely for the purpose of comparing Bids, and that final payment will be based on actual quantities determined in accordance with the Contract Documents.

#### **ARTICLE 6 – PAYMENT PROCEDURES**

- 6.01 Submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the Construction Manager per Section 01 29 00 "Application for Payment Procedures."
- 6.02 Owner will make progress payments on or about the **[25th]** day of each month during performance of the Work after receipt of a proper Application for Payment and required supporting documentation. Payment is based on the total earned value of Work completed in the previous month in accordance with the Schedule of Values established as provided in the General Conditions.
- 6.03 Payment will be made for the total earned value of Work completed in the previous month after deducting:
- A. Retainage calculated per this Agreement;
  - B. Set-offs determined in accordance with the General Conditions; and
  - C. The total amount of payments previously made.
- 6.04 Retainage
- A. Progress payments will be made in an amount equal to 90 percent of the total earned value to date for completed Work and properly stored materials. The remaining 10 percent of the total earned value to date will be held as retainage in accordance with Tex. Gov't Code Chapter 2252 Subchapter B.

- 6.05 Release or reduction in retainage is contingent upon the consent of surety to the reduction in retainage. Submit a Consent of Surety Company to Reduction of or Partial Release of Retainage form as provided by or approved by the Construction Manager.
- 6.06 Owner will pay the remainder of the Contract Price as recommended by Construction Manager in accordance with the General Conditions upon Final Completion and acceptance of the Work.

#### **ARTICLE 7 – PAYMENT OF INTEREST**

- 7.01 All moneys not paid when due as provided in the General Conditions will earn interest at the rate specified in Tex. Gov't Code Chapter 2251. Interest accrual will cease upon payment by the Owner.
- 7.02 Owner shall not owe interest on any amount that is disputed in good faith, not yet due, or for which Contractor has failed to submit a proper Application for Payment and required supporting documentation, as permitted by Tex. Gov't Code Chapter 2251.

#### **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 The Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all Site related reports and drawings as identified in the Supplementary Conditions, including without limitation those listed below, if provided:
    - 1. Geotechnical Data Reports regarding subsurface conditions at or adjacent to the Site;
    - 2. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;
    - 3. Underground Facilities referenced in reports and drawings;
    - 4. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and
    - 5. Technical Data related to each of these reports and drawings.
  - E. Contractor has considered the:
    - 1. Information known to Contractor;
    - 2. Information commonly known to contractors doing business in the locality of the Site;
    - 3. Information and observations obtained from visits to the Site; and
    - 4. The Contract Documents.
  - F. Contractor has considered the items identified in this Article with respect to the effect of such information, observations, and documents on:
    - 1. The cost, progress, and performance of the Work;

2. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  3. Contractor's safety precautions and programs.
- G. Based on the information and observations referred to in the preceding paragraphs, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - H. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - I. Contractor has correlated the information known to the Contractor, **information and observations obtained from visits to the Site**, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
  - J. Contractor has given the Construction Manager written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution provided by the Construction Manager is acceptable to the Contractor.
  - K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - L. Contractor's entry into this Agreement constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
  - M. Contractor acknowledges that Owner does not warrant the accuracy or completeness of record drawings, utility maps, or third-party information, and Contractor assumes responsibility for verification and coordination of field conditions, subject only to the differing site conditions provisions expressly provided in the Contract Documents.

## **ARTICLE 9 – ACCOUNTING RECORDS**

- 9.01 Accounting Record Availability: Contractor is to establish and maintain, in accordance with generally accepted accounting practices, full and detailed accounting records of materials incorporated into the Project, and labor, tools, materials, and equipment used for the Work, consistent with the requirements of the General Conditions and as necessary for proper financial management under this Agreement. Subject to prior written notice, provide Owner reasonable access during normal business hours to Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and the Contractor's fee. Preserve all such documents for a period of 3 years after the final payment by the Owner or longer if required by applicable law, grant requirements, or audit standards. Contractor shall flow down these record retention and access obligations to Subcontractors and suppliers whose records are necessary to verify Contract compliance.

## **ARTICLE 10 – OTHER REQUIREMENTS**

- 10.01 Workers' Compensation Insurance  
Agreement  
PW202602 – Water Services Relocation

- A. By signing this Agreement, Contractor certifies that it provides workers' compensation insurance coverage for all employees employed on this Project pursuant to Tex. Lab. Code Section 406.096(a).
- B. As required by Section 406.096(b), Contractor must require each Subcontractor to certify in writing to the Contractor that the Subcontractor provides workers' compensation insurance coverage for all of the employees it employs on this Project. Contractor must provide these certifications to the Owner within **[10] calendar** days of the Effective Date of the Agreement.

10.02 Contracts Prohibited by Tex. Gov't Code Chapter 2155

A. Section 2155.004:

- 1. Section 2155.004 states that "a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based."
- 2. Under Section 2155.004, Government Code, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

B. Section 2155.006:

- 1. Section 2155.006 states that "a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.
- 2. Under Section 2155.006, Government Code, Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

10.03 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

- A. Tex. Gov't Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.
- B. By signing this Agreement, Contractor certifies that it is not ineligible to be awarded this Contract under Chapter 2252, Subchapter F.

10.04 Prohibition on Contracts with Certain Companies that Boycott Israel

- A. Tex. Gov't Code Chapter 2271 prohibits a governmental entity from entering into a contract with a company for goods or services unless the contract contains a written verification from

the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

- B. By signing this Agreement, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

10.05 Prohibition on Contracts with Companies That Discriminate Against Firearm and Ammunition Industries

- A. Tex. Gov't Code Chapter 2274 prohibits a governmental entity from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

- B. By signing this Agreement, Contractor certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the contract.

10.06 Prohibition on Contracts with Certain Foreign-Owned Companies in Connection with Critical Infrastructure

- A. Tex. Gov't Code Chapter 2275 prohibits a governmental entity from entering into certain contracts or other agreements relating to critical infrastructure if the governmental entity knows that the company has ownership interests held or controlled by citizens or the governments of China, Iran, North Korea, Russia or other countries designated by the State of Texas.

- B. By signing this Agreement, Contractor certifies that it is not ineligible to be awarded this Contract under this Chapter 2275.

10.07 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

- A. Tex. Gov't Code Chapter 2276 prohibits a governmental entity from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

- B. By signing this Agreement, Contractor certifies that it does not boycott energy companies and will not boycott energy companies during the term of this Contract.

10.08 Certificate of Interested Parties: Contractor must complete and submit a Certificate of Interested Parties (Form 1295) to the Owner with the signed Agreement as required by Tex. Gov't Code Section 2252.908.

10.09 Successful Contractor will be required to certify it is not debarred from doing business with the State of Texas or the federal government.

**ARTICLE 11 – VENUE**

11.01 This Agreement shall be administered and interpreted under the laws of the State of Texas. Contractor agrees that venue lies exclusively in **Bexar** County, Texas for any legal action.

**ARTICLE 12 – CONTRACT DOCUMENTS**

12.01 Contract Documents

- A. This Agreement.
- B. Supplementary Conditions.
- C. General Conditions.
- D. Specifications Sections listed in Section 00 01 10 “Table of Contents” except as specifically excluded in Paragraph **[12.02]**.
- E. Drawings listed in the **Sheet Index on the Drawings**.
- F. Addenda issued prior to execution of the Contract.
- G. The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Contract:
  - 1. Notice to Proceed.
  - 2. Contract Amendment(s).
  - 3. Change Order(s).
  - 4. Field Order(s).
  - 5. Work Change Directive(s).
- H. There are no Contract Documents other than those listed above in this Paragraph. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

12.02 Bidding Requirements and Informational Documents

- A. The following Bidding Requirements are not Contract Documents:

00 01 07	Design Professional Seals
00 01 10	Table of Contents
00 11 16	Invitation to Bid
00 21 13	Instructions to Offerors
00 41 13	Bid Form
00 41 16	Bid Form Exhibit A
00 43 13	Bid Bond
00 45 01	Nonresident Bidders
00 45 02	Non-Collusion Certification
00 45 03	Conflict of Interest Questionnaire
00 45 04	State Sales Tax Requirements
00 45 13	Qualifications Statement

The Effective Date of the Contract is **[date to be inserted at the time of contract execution]**.

Owner: \_\_\_\_\_ Contractor: \_\_\_\_\_  
*(typed or printed)* *(typed or printed)*

By: \_\_\_\_\_ By: \_\_\_\_\_  
*(individual's signature)* *(individual's signature)*

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
*(typed or printed)* *(typed or printed)*

Title: \_\_\_\_\_ Title: \_\_\_\_\_  
*(typed or printed)* *(typed or printed)*  
*(Attach evidence of authority to sign)*

Address for giving notice: \_\_\_\_\_ Address for giving notice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated representative: \_\_\_\_\_ Designated representative: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_ Email: \_\_\_\_\_

**END OF SECTION**

**00 61 13      PERFORMANCE BOND**

<p><b>Contractor as Principal</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p><b>Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Owner</b></p> <p>Name:   City of Alamo Heights</p> <p>6116 Broadway Alamo Heights, TX 78209</p>	<p>Physical address (principal place of business):</p>   <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p><b>Contract</b></p> <p>Project name and number:</p> <p>Water Services Relocation - PW202602</p>  <p>Contract Price:</p> <p>Effective Date of Contract:</p>	<p>Surety's state of incorporation:</p> <p><b><i>By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in Texas.</i></b></p>
<p><b>Bond</b></p> <p>Bond Amount:   100 percent Contract Price</p> <p>Date of Bond:</p> <p>(Date of Bond cannot be earlier than Effective Date of Contract)</p>	<p><b>Local Agent for Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>  <p>Telephone (Main):</p> <p><b><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.</i></b></p>

***Surety and Contractor, intending to be legally bound and obligated to Owner, do each cause this performance bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal faithfully performs the Work required by the Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. Provisions of this bond shall be pursuant to the terms and provisions of Texas Government Code Chapter 2253 as amended and all liabilities on this bond shall be determined in accordance with the terms and provisions of said Chapter to the same extent as if it were copied at length herein. Venue lies exclusively in [specify name] County, Texas for any legal action.***

<p><b>Contractor as Principal</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Email: _____</p>	<p><b>Surety</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Email: _____</p> <p><i>(Attach Power of Attorney and place surety seal below)</i></p>
--	--

**END OF SECTION**

**00 61 16      PAYMENT BOND**

<p><b>Contractor as Principal</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>	<p><b>Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Owner</b></p> <p>Name:   City of Alamo Heights</p> <p>6116 Broadway Alamo Heights, TX 78209</p>	<p>Physical address (principal place of business):</p> <p>Telephone (Main):</p> <p>Telephone (Claims):</p>
<p><b>Contract</b></p> <p>Project name and number: Water Services Relocation - PW202602</p> <p>Contract Price:</p> <p>Effective Date of Contract:</p>	<p>Surety's state of incorporation:</p> <p><b><i>By submitting this bond, Surety affirms that it is licensed to provide and execute this bond and authorized to do business in Texas.</i></b></p> <p><b>Local Agent for Surety</b></p> <p>Name:</p> <p>Mailing address (principal place of business):</p>
<p><b>Bond</b></p> <p>Bond Amount:   100 percent Contract Price</p> <p>Date of Bond:</p> <p>(Date of Bond cannot be earlier than Effective Date of Contract)</p>	<p>Telephone (Main):</p> <p><b><i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439.</i></b></p>

***Surety and Contractor intending to be legally bound and obligated to Owner do each cause this payment bond to be duly executed on its behalf by its authorized officer, agent, or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal pays all claimants providing labor or materials to Contractor or to a Subcontractor in the prosecution of the Work required by the Contract then this obligation will be null and void; otherwise the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Texas Government Code Chapter 2253 as amended and all liabilities on this bond shall be determined in accordance with the terms and provisions of said Chapter to the same extent as if it were copied at length herein. Venue lies exclusively in [specify name] County, Texas for any legal action.***

<p><b>Contractor as Principal</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Email: _____</p>	<p><b>Surety</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Email: _____</p> <p><i>(Attach Power of Attorney and place surety seal below)</i></p>
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**END OF SECTION**

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.

## 00 73 00 SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement Section 00 72 00 "General Conditions." 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.

The paragraph numbers used in the Supplementary Conditions correspond to the General Condition paragraphs they modify with the prefix "SC" added—for example, "Paragraph SC-4.05." modifies General Conditions Paragraph 4.05.

### ARTICLE 1—DEFINITIONS AND TERMINOLOGY

#### SC-1.01 *Defined Terms*

- A. Supplement Paragraph 1.01.A by inserting the following defined terms as numbered items in their proper alphabetical positions:
  1. *Bid Security*—The financial security provided by Offeror at the time the Bid is submitted and held by Owner until the Agreement is executed and the evidence of insurance and bonds required by the Contract Documents are provided.
  2. *Construction Manager*—The individual or entity named as the Construction Manager in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management as advisor services to the Owner.
  3. *Contract Amendment*—A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:
    - a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or
    - b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.
  4. *Contractor's Team*—Contractor, Subcontractors, Suppliers, and individuals or entities directly or indirectly employed or retained by Contractor, Subcontractors, or Suppliers to perform part of the Work, or anyone for whose acts they may be liable.
  5. *Defective*—When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. Does not conform to the Contract Documents;
    - b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or
    - c. Has been damaged prior to Construction Manager's recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 15.03 or 15.04.

6. *Design Professional*—The individuals or entity named as the Architect or Engineer in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by Design Professional to provide design or other technical services to the Owner. Design Professional has responsibility for design and technical issues related to the Contract Documents.
7. *Final Completion*—The point where the Work is complete in accordance with the Contract Documents, items and documents required by the Contract Documents have been accepted by the Owner and the Project is ready for Final Payment.
8. *Indemnified Costs*—All costs, losses, judgments, and damages resulting from claims or demands against Owner’s Indemnitees. These costs include fees for design professionals, attorneys, and other professionals and any legal, court, arbitration, or other dispute resolution costs.
9. *Manufacturer*—The individual or entity that designs, casts, fabricates, manufactures, assembles, tests, and provides materials or equipment to be incorporated in the Work.
10. *Modification*—Change made to the Contract Documents by Contract Amendment, Change Order, Field Order, or Work Change Directive.
11. *Offeror*—An individual or entity that submits a Bid or Proposal to Owner. When used in the Bidding Documents, Proposal Documents, or Contract Documents, the term Bidder has the same meaning as the term Offeror.
12. *Owner’s Budget*—The amount budgeted by the Owner for the construction of the Project.
13. *Owner’s Indemnitees*—Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
14. *Owner’s Project Team (OPT)*—The Owner, Design Professional, Construction Manager, and the other entities identified in the Supplementary Conditions and the consultants, subconsultants, individuals or entities directly or indirectly employed or retained by them to provide services to the Owner. The OPT consists of the following organizations:
  - a. **City of Alamo Heights, Texas – 6116 Broadway, Alamo Heights, TX 78209**
  - b. **Ardurra Group Inc. – 8918 Tesoro Drive, Suite 401, San Antonio, TX 78217**
15. *Project Construction Manager (PCM)*—The authorized representative of the OPT assigned to assist the Construction Manager at the Site. The term Project Construction Manager includes assistants and field staff of the Construction Manager.
16. *Project Management Information System (PMIS)*—The online project management system that will be used by OPT and Contractor to submit and share documentation and other related communications and information for this Project.
17. *Schedule of Anticipated Payments*—A detailed tabulation, prepared and maintained by Contractor, showing the anticipated amount of each Application for Payment and the month in which they will be submitted.

18. Schedule of Documents—A detailed tabulation, prepared and maintained by Contractor, of each required document submittal and the time requirements for review and approval of each submittal. When used in the Bidding Requirements, Proposal Requirements, or Contract Documents, the term Schedule of Submittals has the same meaning as the term Schedule of Documents.
19. *Set-off*—A reduction in payment due to Contractor under Article 15.

#### SC-1.02 Terminology

- A. Supplement Paragraph 1.02 by adding the following paragraphs:
  - “H. The terms "includes" and “including" are used as terms of enlargement and not of limitation or exclusive enumeration, and use of these terms does not create a presumption that components not expressed are excluded. The terms “consist of” or “consisting of” limits the interpretation to only those items specifically listed.”
  - “I. It is understood that the cost of providing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions like “at no additional cost to Owner,” “at Contractor’s expense,” or similar words mean that the Contractor is to include the cost of this Work in their Contract Price and perform or provide specified Work without an increase in the Contract Price.”
  - “J. Written documents are required where reference is made to notices, reports, approvals, consents, statements, instructions, opinions, or other types of documentation or communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT’s Project Management Information System or other electronic media as required by the Contract Documents or approved by the Construction Manager.”
  - “K. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.”

## ARTICLE 2—PRELIMINARY MATTERS

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

- A. Delete Paragraph 2.01.B in its entirety and insert the following in its place:
  - “B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver copies of the insurance policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in this Contract. Contractor may redact any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.”
- B. Delete Paragraph 2.01.C in its entirety.

### *SC-2.02 Copies of Documents*

- A. Delete Paragraphs 2.02.A and 2.02.B in their entirety and insert the following in their place:
  - “A. Owner shall furnish one fully signed counterpart of the Agreement and one copy of the executed Contract Documents in electronic Portable Document Format (PDF). This document is the Project Record Copy of the Contract Documents. Contractor may make as many prints of the documents as needed for construction. Engineer will not provide printed or hard copies to the Contractor.”

### *SC-2.06 Electronic Submittals*

- A. Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:
  - “B. Electronic Documents Protocol: The parties shall conform to the provisions in Section 01 33 00 “Document Management” for exchange of electronic submittals.

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

### *SC-3.01 Intent*

- A. Delete Paragraph 3.01.A in its entirety and insert the following in its place:
  - “A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all. The Drawings and Specifications do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Engineer. Provide any work, materials, or equipment required for a complete and functional system even if they are not detailed or specified.
    1. The Contract requirements described in the General Conditions, Supplementary Conditions, and General Requirements apply to each and all Sections of the Specifications unless specifically noted otherwise.
    2. Organization of Contract Documents is not intended to control or to lessen the responsibility of the Contractor when dividing Work among Subcontractors, or to establish the extent of Work to be performed by any trade, Subcontractor, or Supplier. Specifications or details do not need to be indicated or specified in each specification or drawing. Items shown in the Contract Documents are applicable regardless of location in the Contract Documents.
    3. Standard paragraph titles and other identifications of subject matter in the Specifications are intended to aid in locating and recognizing various requirements of the Specifications. Titles do not define, limit, or otherwise restrict specification text.”

- B. Supplement Paragraph 3.01.D by adding the following sentence:  
“The Contract Documents comprise the entire Agreement between Owner and Contractor and may be modified only by Field Order, Change Order, Contract Amendment, or Work Change Directive.”
- C. Supplement Paragraphs 3.01 by adding the following paragraphs:  
“H. Where compliance with two or more standards is specified and they establish different or conflicting requirements for minimum quantities or quality levels, Contractor shall comply with the most stringent requirements unless the Contract Documents indicate otherwise.
1. Quantity or quality level shown or indicated shall be the minimum to be provided or performed in every instance.
  2. Actual installation shall comply exactly with minimum quality indicated or may exceed that minimum within reasonable limits.
  3. In complying with these requirements, indicated numeric values are minimum or maximum values, as noted, or appropriate for context of requirements.
  4. Refer instances of uncertainty to the Engineer for a decision before proceeding.”
- “I. Provide materials and equipment comparable in quality to similar materials and equipment incorporated in the Project or as required to meet the minimum requirements of the application if the materials and equipment are shown in the Drawings but are not included in the Specifications.”

### *SC-3.02 Reference Standards*

- A. Supplement Paragraph 3.02.A by adding the following subparagraph:  
“3. Comply with applicable construction industry standards as if bound or copied directly into the Contract Documents regardless of lack of reference in the Contract Documents. Apply provisions of the Contract Documents where Contract Documents include more stringent requirements than the referenced standards.
- a. Standards referenced directly in the Contract Documents take precedence over standards that are not referenced but recognized in the construction industry as applicable.
  - b. Comply with standards not referenced but recognized in the construction industry as applicable for performance of the Work except as otherwise limited by the Contract Documents. Engineer will determine whether codes or standards are applicable to the performance of the Work.
  - c. Make copies of reference standards available as requested by Engineer or Owner.”

*SC-3.03 Reporting and Resolving Discrepancies*

- A. Delete Paragraph 3.03.A.3 in its entirety and insert the following in its place:

“3. In the event of a conflict in the Drawings, Specifications, or other portions of the Contract Documents which were not reported prior to the bidding of the Contract, the Contractor shall be deemed to have included the most expensive item, system, procedure, etc. in its Bid or Proposal.”

*SC-3.05 Reuse of Documents*

- A. Delete the last sentence of Paragraph 3.05.B and insert the following in its place:

“Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes, unless specifically prohibited in writing by the Owner for security reasons. If the Owner so directs, Contractor shall surrender all copies of the construction Contract Documents and other related documents, in paper or digital format and remove these documents from computer equipment or storage devices as a condition of final payment.”

**ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

*SC-4.04 Progress Schedule*

- A. Supplement Paragraph 4.04 by adding the following paragraph:

“C. Contractor assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents.”

*SC-4.05 Delays in Contractor’s Progress*

- A. Delete Paragraph 4.05(A) in its entirety and insert the following in its place:

“A. Contractor’s sole remedy for any delay, disruption, or interference caused by Owner or others for whom Owner is responsible shall be an extension of Contract Time. Contractor shall not be entitled to damages, compensation, or additional payment for such delay except to the extent expressly required by Tex. Loc. Gov’t Code Chapter 271.”

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

*SC-5.01 Availability of Lands*

- A. Supplement Paragraph 5.01.C by adding the following sentence:

“A copy of the written agreements for the use of such land shall be provided to the Owner for record purposes.”

*SC-5.02 Use of Site and Other Areas*

- A. 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, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”) 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.**”

*SC-5.03 Subsurface and Physical Conditions*

- A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.03 of the General Conditions related to subsurface and physical conditions.
  - 1. 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	Report Date	Technical Data
None		

- 2. 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:

Drawing Title	Drawing Date	Technical Data
None		

- 3. Copies of reports and drawings may be downloaded from the project procurement website.

*SC-5.04 Differing Subsurface or Physical Conditions*

- A. Amend Paragraph 5.04.A by deleting the word “promptly” and inserting “promptly, but no later than within 3 days,” in its place.

*SC-5.05 Underground Facilities*

- A. Amend Paragraph 5.05.B by deleting the word “promptly” and inserting “promptly, but no

later than within 3 days,” in its place.

*SC-5.06 Hazardous Environmental Conditions at Site*

- A. This Supplementary Condition identifies the reports and drawings referenced in Paragraph 5.06 of the General Conditions related to Hazardous Environmental Conditions at the Site.
  - 1. 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	Report Date	Technical Data
None		

- 2. 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:

Drawing Title	Drawing Date	Technical Data
None		

- 3. Copies of reports and drawings may be downloaded from the project procurement website.
- B. Delete Paragraph 5.06.I in its entirety.
- C. Delete Paragraph 5.06.J in its entirety and insert the following in its place:
  - J. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”) 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.”**

**ARTICLE 6—BONDS AND INSURANCE**

*SC-6.01 Performance, Payment, and Other Bonds*

- A. Supplement Paragraph 6.01 by adding the following paragraphs:
  - I. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond or payment bond. By Contractor furnishing and Owner accepting these bonds, they agree that all funds earned by Contractor in the performance of the Contract are

dedicated to satisfy obligations of Contractor under these bonds, subject to Owner's priority to use the funds for the completion of the Work."

- J. Contractor or surety on behalf of Contractor shall promptly notify the Owner of all claims filed against the payment bond. When a claimant has satisfied the conditions prescribed by Laws and Regulations, the Contractor, or surety on behalf of Contractor, shall, with reasonable promptness, notify the claimant and Owner of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Contractor, or surety on behalf of Contractor shall, with reasonable promptness, pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Contractor or surety on behalf of Contractor to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Contractor or surety as to such claim or otherwise constitute a waiver of the Contractor's or surety's defenses to, or right to dispute, such claim.
- K. Owner shall not be liable for payment of any costs or expenses of any claimant under payment bonds, and shall have no obligations to make payments to, give notices on behalf of, or otherwise have obligations to claimants under payment bonds."

*SC-6.02 Insurance—General Provisions*

- A. Delete Paragraph 6.02.A in its entirety and insert the following in its place:
  - A. Obtain and maintain insurance in accordance with Section 00 73 16 "Insurance Requirements."

*SC-6.05 Property Losses; Subrogation*

- A. Delete the words "Owner and Contractor waive" in the first sentence of Paragraph 6.05.A.1 and replace it with the words "Contractor waives".
- B. Delete Paragraph 6.05.B.1 in its entirety.

*SC-6.06 Receipt and Application of Property Insurance Proceeds*

- A. Delete Paragraph 6.06 in its entirety.

*SC-6.07 Owner's Insurance for Project*

- A. Add a new Paragraph 6.07 as follows:
  - 6.07 *Owner's Insurance for Project*
  - A. Owner shall not be responsible for purchasing and maintaining any insurance to protect the interest of the Contractor, Subcontractors, or others in the Work. The stated limits of insurance required are minimum only. Contractor shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, resulting from or connected with operations under this Contract whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by the Owner, Engineer, and/or others listed as an

additional insured, that in any respect do not comply with the Contract requirements does not release the Contractor from compliance herewith.”

## ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

### SC-7.03 Labor; Working Hours

- A. 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 stated in the Contract Documents, no Work shall be performed at the Site between 6:00 p.m. and 7:00 a.m. Contractor will not permit the performance of Work on a Saturday, Sunday, or any Owner holiday without Owner’s written consent. Should Contractor desire to work on these days, Contractor shall contact the Owner, in writing, for approval at least 48 hours in advance. Emergency work may be done without prior permission. Tie ins and connections to existing facilities will be made at time authorized by the Owner. Owner's legal holidays are **Juneteenth, Independence Day, Labor Day, Columbus/Indigenous Peoples’ Day, Veteran’s Day, Thanksgiving Day, Christmas Eve, Christmas Day, and New Year’s Day.”**
- B. Supplement Paragraph 7.03 by adding the following paragraph:
  - D. **Contractor** shall be responsible for the cost of overtime pay or other expense incurred by the Owner for Construction Management Services, Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, 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. For purposes of administering the foregoing requirement, additional overtime costs will be billed at rates shown in SC-15.01.E.”

### SC-7.08 Patent Fees and Royalties

- A. Delete Paragraph 7.08.B in its entirety.
- B. Delete Paragraph 7.08.C in its entirety and insert the following in its place:
  - C. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”) 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.”**

### SC-7.10 Taxes

- A. Supplement Paragraph 7.10 by adding the following paragraph:
- “B. Owner qualifies as an exempt agency as defined by the statutes of the State of Texas. 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.”
1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  2. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

### SC-7.11 Laws and Regulations

- A. 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 INDEMNIFY AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”)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.”**

### SC-7.15 Emergencies

- A. Amend Paragraph 7.15.A by deleting the last sentence and inserting the following in its place:
- “Contractor may submit a Change Proposal if the incident giving rise to the emergency action was not the responsibility of the Contractor and a change in the Contract Documents is required because of the emergency or the action taken by Contractor in response to such an emergency.”

### SC-7.16 Submittals

- A. Delete Paragraph 7.16.A.3 in its entirety and insert the following in its place:
- “3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents on a Shop Drawing Deviation Request form provided by the Engineer and request that a Field Order or Change Order be issued for each of the specific variations submitted for approval. This notice shall be both a written

communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.”

- B. Delete Paragraph 7.16.C.4 in its entirety and insert the following in its place:
  - “4. Engineer’s review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A and Engineer has given written approval of each such variation by issuing a Field Order or Change Order. If the proposed Modification is approved by the Engineer, the submittal will be considered to be in strict compliance with the Contract Documents and it will be reviewed in accordance with the Contract Documents. If the proposed Modification is not approved, the submittal will be returned to the Contractor with appropriate comments. Engineer’s review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A.”
- C. Delete Paragraph 7.16.D.1 in its entirety and insert the following in its place:
  - “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. Resubmittals shall reference and respond directly to Engineer’s previous comments. Any variations from strict compliance with the Contract Documents will be identified in the same manner as required in Paragraph 7.16.A and will require the same approvals.”

#### *SC-7.18 Indemnification*

- A. Delete Paragraph 7.18.A in its entirety and insert the following in its place:
  - “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, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”)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. Supplement Paragraph 7.18 by adding the following paragraph:
  - “C. Contractor’s obligations to indemnify or hold Owner’s Indemnitees harmless against losses, damages, or expenses specified in these General Conditions shall be subject to

the applicable limitations of Chapter 130 of the Texas Civil Practice and Remedies Code.”

## ARTICLE 8—OTHER WORK AT THE SITE

### SC-8.03 *Legal Relationships*

- A. 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, 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, DEFEND, AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”)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.**”

### SC-8.04 *Claims Between Contractors*

- A. Supplement Article 8 by adding the following paragraph:
- “8.04 *Claims between Contractors*
- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor’s performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.
- B. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, (ALL THE “INDEMNITEES” AND INDIVIDUALLY AN “INDEMNITEE”)FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING DIRECTLY, INDIRECTLY OR CONSEQUENTIALLY OUT OF ANY ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY OTHER CONTRACTOR AGAINST MEMBERS OF THE OPT TO THE EXTENT SAID CLAIM IS BASED ON OR ARISES OUT OF CONTRACTOR’S PERFORMANCE OF THE WORK. SHOULD ANOTHER CONTRACTOR CAUSE DAMAGE**

**TO THE WORK OR PROPERTY OF CONTRACTOR OR SHOULD THE PERFORMANCE OF WORK BY ANY OTHER CONTRACTOR AT THE SITE GIVE RISE TO ANY OTHER CLAIM, CONTRACTOR SHALL NOT INSTITUTE ANY ACTION, LEGAL OR EQUITABLE, AGAINST OWNER'S INDEMNITEES OR PERMIT ANY ACTION AGAINST ANY OF THEM TO BE MAINTAINED AND CONTINUED IN ITS NAME OR FOR ITS BENEFIT IN ANY COURT OR BEFORE ANY ARBITER WHICH SEEKS TO IMPOSE LIABILITY ON OR TO RECOVER DAMAGES FROM MEMBERS OF THE OPT ON ACCOUNT OF ANY SUCH DAMAGE OR CLAIM.**

- C. Contractor may submit a Change Proposal for an extension of Contract Times, in accordance with Article 11, if Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor. An extension of the Contract Times will be Contractor's exclusive remedy with respect to members of the OPT for any delay, disruption, interference, or hindrance caused by any other contractor."

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

### *SC-9.13 Owner's Site Representative*

- A. Supplement Article 9 by adding the following paragraph:

"9.13 *Owner's Site Representative*

- A. Owner will furnish an "Owner's Site Representative" to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner's Site Representative is not Engineer's consultant, agent, or employee. Owner's Site Representative will be City of Alamo Heights Staff.

## **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

### *SC-10.03 Resident Project Representative*

- A. Supplement Paragraph 10.03.A by adding the following subparagraph:

"1. Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work on this Project by agreement with the Owner."

## **ARTICLE 11—CHANGES TO THE CONTRACT**

### *SC-11.02 Change Orders*

- A. Supplement Paragraph 11.02 by adding the following paragraph:

"C. Contractor assumes and bears responsibility for all costs and time delays associated with any variation from the requirements of the Contract Documents unless the variation is specifically approved by Change Order."

### *SC-11.11 No Damage for Delays*

- A. Supplement Article 11 by adding the following paragraph:

"11.11 *No Damage for Delays*

- A. Contractor agrees to make no Claims for damage for delay in the performance of the Contract occasioned by any act or omission to act of the Owner, Engineer, or any of the Engineer's or Owner's agents, and agrees that any such Claim shall be fully compensated by an extension of time, as set forth in a Change Order, to complete performance of the Work as provided herein."

## **ARTICLE 12—CLAIMS**

### *SC-12.01 Claims*

- A. Amend Paragraph 12.01.B by deleting "but in no event later than 30 days" and inserting "but in no event later than 7 days" in its place.

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

### *SC-13.01 Cost of the Work*

- A. Amend Paragraph 13.01.B by deleting the following words in the first sentence:  
"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:"  
and insert the following in its place:  
"those paid for the Work included in the Contract Price, and shall not include any of the costs itemized in Paragraph 13.01.C. Contractor shall provide certified payroll records listing personnel classifications and salaries for all individuals involved in additional Work. Salaries for those not included in the certified payroll will be considered as being compensated under Paragraph 13.01.C, and shall include only the following items:"
- B. Amend Paragraph 13.01.B.1 by deleting the following words in the second sentence:  
", without limitation, superintendents, foremen"  
and inserting the following in its place:  
"one foreman (unless agreed upon prior to beginning Work)"
- C. Amend Paragraph 13.01.B.1 by deleting the following words in the last sentence:  
"be included in the above"  
and inserting the following in its place:  
"not exceed 1.5 times regular pay and shall be included in the above"
- D. Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:  
"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 edition of EquipmentWatch Cost Recovery Rental Rate Blue Book, which now online at <https://equipmentwatch.com/blue-book-cost-recovery/>."
- E. Amend Paragraph 13.01.C.1 by adding "superintendents" to the list of excluded personnel in the first sentence.

*SC-13.03 Unit Price Work*

- A. Delete Paragraph 13.03.E in its entirety and insert the following in its place:
1. “E. *Adjustments in Unit Price*
  2. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
    - a. If the total cost of a particular item of Unit Price Work amounts to 20 percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of such item indicated in the Agreement; and
    - b. If there is no corresponding adjustment with respect to any other item of Work; and
    - c. If Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the Unit Price, either the Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variation in the quantity of the Unit Price Work performed.”

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

*SC-15.01 Progress Payments*

- A. Delete Paragraph 15.01.B.1 in its entirety and insert the following in its place:
- “1. On the first working day following the 25th of each month, Contractor shall submit to Owner 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.”
- B. Amend Paragraph 15.01.C.1 by deleting “10” and inserting “30” in its place.
- C. Amend Paragraph 15.01.E.1 by deleting Subparagraph 15.01.E.1.l and adding the following in its place:
- “l. Owner has been notified of failure to make payments to Subcontractors or Suppliers or for labor;”
- “m. failure to submit up to date record documents as required by the Contract Documents;”
- “n. failure to submit monthly Progress Schedule updates or revised schedules as requested by the Owner or Engineer;”
- “o. failure to provide Project videos or photographs required by the Specifications;”
- “p. Other items entitle Owner to a set off against the amount recommended.”
- D. Amend Paragraph 15.01.E.3 by deleting “and subject to interest as provided in the Agreement.”
- E. Supplement Paragraph 15.01.E by adding the following subparagraph:
- “4. Owner may permanently withhold payment from Contract Price for:

- a. Liquidated damages incurred by Contractor.
- b. Compensation for OPT for overtime charges of Design Professional, Construction Manager, Resident Project Representative, third review of submittals, review of substitutions, re inspection fees, inspections, or designs related to correction of defective Work, or other Services identified as requiring payment by the Contractor.

1) Compensation will be based on the following rates:

Position	Hourly Rate
Principal in Charge	\$267
Project Manager	\$200
Project Engineer	\$155
Construction Manager	\$197
Resident Engineer	\$173
Resident Project Representative	\$200
Senior Resident Representative	\$267
Design Engineer	\$108
Engineering Technician	\$108
Clerk	\$165

2) Expenses will be billed at the actual cost multiplied by 1.15.

- c. Costs for tests performed by the Owner to verify that Work previously tested and found to be defective has been corrected. Verification testing is to be provided at the Contractor's expense to verify products or constructed works are in compliance after corrections have been made."

**SC-15.03 Substantial Completion**

A. Supplement Paragraph 15.03.B by adding the following subparagraphs:

"1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable Set-off against payments due under this Article 15."

B. Add a new paragraph immediately after Paragraph 15.03.F.

"G. The following items must be fully functional and suitable for Substantial Completion:

- 1. Final mat of asphalt pavement has been installed, and tests passed.

Any damages have been restored to their original or better condition.

**SC-15.06 Final Payment**

A. Delete Paragraph 15.06.E in its entirety and insert the following in its place:

"E. *Final Payment Becomes Due*: The first working day following the 10th day of the second month following the submittal of the final Application for Payment and accompanying documentation, the amount recommended by the Engineer (less any further sum

Owner is entitled to set off against Engineer's recommendation, including but not limited to set offs for liquidated damages and set offs allowed under the provisions above with respect to progress payments) will become due and will be paid by Owner to Contractor."

*SC-15.08 Correction Period*

- A. Supplement Paragraph 15.08 by adding the following paragraph:

"G. When early acceptance of a Substantially Completed portion of the Work is accomplished in the manner indicated in the Contract Documents, the correction period for that portion of the Work shall commence at the time of Substantial Completion of that Work."

**ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

*SC-16.02 Owner May Terminate for Cause*

- A. Delete Subparagraphs 16.02.A.3 and 16.02.A.4 in their entirety and replace them with the following:

"3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;"

"4. Contractor's repeated disregard of the authority of Owner or Engineer;"

"5. Contractor fails to provide a replacement bond or insurance coverage as required by the General Conditions and as amended by the Supplementary Conditions; or"

"6. If any petition of bankruptcy is filed by or against Contractor, or if Contractor is adjudged as bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of Contractor's creditors, or if a receiver is appointed on account of Contractor's insolvency, upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 7 days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth in Article 16 of the General Conditions. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis. The cost of work by Owner or other contractors will be back charged against the Contract Sum hereof."

**Delete Paragraph 16.02.G in its entirety.**

**ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

*SC-17.01 Methods and Procedures*

- A. Delete Paragraph 17.01 in its entirety and insert the following in its place:

"17.01 *Methods and Procedures*

- A. The Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Law."

## ARTICLE 18—MISCELLANEOUS

### SC-18.02 *Computation of Times*

- A. Supplement Paragraph 18.02 by adding the following paragraph:
  - “B. All references and conditions for a “Calendar Day Contract” in the General Conditions and Supplementary Conditions shall apply for a “Fixed Date Contract.” A “Fixed Date Contract” is one in which the calendar dates for reaching Substantial Completion and/or final completion are specified in lieu of identifying the actual calendar days involved.”

### SC-18.10 *Headings*

- A. Delete Paragraph 18.08.A in its entirety and insert the following in its place:
  - “A. The Article and paragraph headings in this Agreement are inserted for convenience only and do not constitute parts of these General Conditions or act as a limitation of the scope of the particular section to which they refer. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.”

### SC-18.09 *Independent Contractor*

- A. Supplement Article 18 by adding the following paragraph:
  - “18.11 *Independent Contractor*
  - A. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.”

### SC-18.12 *Severability*

- A. Supplement Article 18 by adding the following paragraph:
  - “18.12 *Severability*
  - A. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.”

### SC-18.13 *No Third Party Beneficiaries*

- A. Supplement Article 18 by adding the following paragraph:
  - “18.13 *No Third Party Beneficiaries*
  - A. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.”

*SC-18.14 Sovereign Immunity*

- A. Supplement Article 18 by adding the following paragraph:

*“18.14 Sovereign Immunity*

- A. The parties agree that the Owner has not waived its sovereign immunity by entering into and performing its obligations under this Agreement. Any claim against Owner is strictly limited to the damages and remedies permitted by Chapter 271 of the Tex. Loc. Gov’t Code, and no provision of the Contract Documents shall be construed to expand Owner’s liability beyond such statutory limits.”

**END OF SECTION**

## 00 73 16 INSURANCE REQUIREMENTS

### ARTICLE 1 – GENERAL PROVISIONS

#### 1.01 CONTRACTOR’S INSURANCE

- A. Obtain and maintain insurance that complies with this Section with coverage amounts equal to or greater than the amounts specified in Article 2 or greater where required by Laws and Regulations.
- B. Coverage is to remain in effect at least until the Work is complete and longer if expressly required elsewhere in this Contract, and when Contractor may be correcting, removing, or replacing Defective Work as a warranty or correction obligation, or returning to the Site to conduct other tasks arising from the Contract.
- C. Coverage is to apply with respect to the performance of the Work, whether 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.
- D. Obtain insurance from companies that are duly licensed or authorized in the state in which the Project is constructed to issue insurance policies for the required limits and coverages and that have an A.M. Best rating of A-VIII or better.
- E. Alternative forms of insurance coverage, including self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not acceptable to meet the insurance requirements of this Contract.
- F. Owner will not purchase or maintain insurance to protect the interest of Contractor, subcontractors, or others in the Work. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or the 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 it deems necessary and including the cost of this insurance in the offered Contract Price.
- G. Contractor is fully responsible for all losses arising out of, resulting from, or connected with operations under this Contract whether or not these losses are covered by insurance. The acceptance of evidence of insurance by OPT, or others listed as an additional insured, that does not comply with the Contract requirements does not release Contractor from the requirement to comply with Contract requirements.
- H. The required insurance and insurance limits do not limit the Contractor’s liability under the indemnities granted to Owner’s Indemnitees in the Contract Documents.
- I. Do not perform any Work on the Project unless the required insurance policies are in effect. Owner may exclude Contractor from the Site and exercise the Owner’s termination rights under the General Conditions if Contractor fails to obtain or maintain the required insurance.
- J. Policies must provide notice before cancellation, non-renewal, or any material change in the policy’s terms and conditions as described in Paragraph **[1.04.D]**. Contractor is to notify Owner and the additional insured of any notice received within 3 days of receipt of a notice by Contractor. Contractor is to cease all Work covered by cancelled or non-renewed insurance if suitable coverage is not in place in time to prevent a lapse in coverage. Contractor is solely responsible for any delays associated with lapsed coverage.

- K. Owner may elect, but is in no way obligated, to obtain equivalent insurance to protect the Owner's interests without prejudice to any other right or remedy if Contractor fails to obtain or maintain the required insurance. Owner may impose a reasonable Set-off against payments to recover the cost of the insurance.
- L. Owner's policies, if any, operate separately and independently from policies required to be provided by Contractor and Contractor cannot rely upon the Owner's policies to meet any of the Contractor's obligations to Owner, Design Professional, or any third party.

#### 1.02 SUBCONTRACTOR OR SUPPLIER INSURANCE

- A. Require subcontractors to purchase and maintain workers' compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project. Include OPT as additional insureds on subcontractor policies in accordance with Paragraph **[1.03]**.
- B. Require suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- C. Contractor is liable for all losses that would have been covered by subcontractor or supplier insurance if subcontractor or supplier fails to provide coverage.

#### 1.03 ADDITIONAL INSURED

- A. The following are to be named as an additional insured on all insurance policies, except workers' compensation insurance, builder's risk insurance, and the Contractor's professional liability insurance:
  - 1. **City of Alamo Heights**  
**Attn: Robert Galindo, Director of Finance 6116 Broadway**  
**Alamo Heights, TX 78209**
  - 2. **Ardurra Group Inc**  
**Attn: Risk Management**  
**8918 Tesoro Drive, Suite 401**  
**San Antonio, TX 78217**
- B. All insurance related notices are to be sent to the addresses listed above.
- C. Notify Owner and each additional insured if Contractor fails to purchase or maintain the insurance required by the Contract Documents.
- D. All insurance policies must include a waiver of subrogation in favor of each additional insured.
- E. Provide for an endorsement that the "other insurance" clause will not apply to OPT where OPT is an additional insured. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by OPT for liability arising out of operations under this Contract.

#### 1.04 EVIDENCE OF INSURANCE

- A. Deliver evidence of insurance, in accordance with this Section, to the Owner with the signed Contract Documents to demonstrate that Contractor has obtained the policies, coverages, and endorsements required by the Contract.
  - 1. Continue to provide evidence Contractor is maintaining the required insurance for the duration of the Contract Times and such extended periods as required by the Contract Documents.
  - 2. Provide this evidence of insurance to Owner and each additional insured.
  - 3. Contractor may block out (redact) any confidential premium or pricing information and wording specific to a project or jurisdiction in any policy or endorsement furnished under this paragraph not applicable to this Contract.
- B. OPT's failure to demand evidence of insurance or verify the Contractor's full compliance with insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.
- C. Provide evidence of insurance acceptable to Owner with the executed Contract Documents. Provide the following as evidence of insurance:
  - 1. Copy of insurance policies;
  - 2. Certificates of insurance on an acceptable form;
  - 3. Full disclosure of exclusions;
  - 4. Declaration pages, riders, or endorsements to policies;
  - 5. Documentation of deductibles;
  - 6. List of named and additional insureds for each policy; and
  - 7. Evidence that waivers of subrogation are provided on applicable policies.
- D. Provide evidence of a requirement in the policy that at least 10 days' notice will be given before cancellation, non-renewal or any material change in the policy's terms and conditions including:
  - 1. Type of coverage provided;
  - 2. Riders or endorsements to policies;
  - 3. Policy limits of coverage;
  - 4. Change in deductible amount;
  - 5. Status of named or additional insured; or
  - 6. Waivers of subrogation.
- E. Certificates of Insurance:
  - 1. Submit certificates of insurance meeting the applicable requirements of the applicable state department of insurance. No requirement of this Contract may be interpreted as requiring the issuance of a certificate of insurance on a form that has not first been filed with and/or approved by the applicable state department of insurance.

2. Include the name of the Project in the description of operations box on the certificate of insurance, and the name of each additional insured.
- F. Continuing Evidence of Coverage:
1. Provide updated, revised, or new evidence of insurance prior to the expiration of existing policies. A certificate of insurance is acceptable as evidence of renewal of insurance policies, provided no changes are made in the policy originally provided with signed Contract Documents.
  2. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years.

**ARTICLE 2 – INSURANCE COVERAGE AMOUNTS AND POLICY REQUIREMENTS**

2.01 CONTRACTOR’S INSURANCE

A. Workers’ Compensation and Employer’s Liability Insurance:

1. Purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation, including off-site operations.
2. Provide the following coverage with not less than the minimum limits indicated:

<b>Workers’ Compensation and Related Insurance</b>	<b>Policy Limits</b>
<b>Workers’ Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshore)	Statutory
Foreign Voluntary Workers’ Compensation (Employer’s Responsibility Coverage), if Applicable	Statutory
<b>Jones Act (if applicable)</b>	
Bodily Injury by Accident – Each Accident	\$500,000
Bodily Injury by Accident – Aggregate	\$2,000,000
Bodily Injury by Disease – Each Occurrence	\$1,000,000
Bodily Injury by Disease – Aggregate	\$500,000
<b>Employers’ Liability</b>	
Each Accident	\$500,000
Each Employee	\$500,000
Policy Limit (per each accident)	\$1,000,000
<b>Stop-Gap Liability Coverage</b>	
For Work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the workers’ compensation or commercial general liability policy with a minimum limit of:	\$1,000,000

- B. Commercial General Liability:
1. Purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
    - a. Damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
    - b. Damages insured by reasonably available personal injury liability coverage; and
    - c. Damages because of injury to or destruction of tangible property wherever located, including loss of use resulting from the damage.
  2. Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form).
    - a. Provide additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). Equivalent endorsements may be used if Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available.
    - b. Provide ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Design Professional additional insured.
  3. Provide the following coverages and endorsements:
    - a. Products and completed operations coverage.
      - 1) Maintain coverage for 3 years after final payment.
      - 2) Provide Owner and each other additional insured evidence of continuation of such insurance at final payment and for 3 years thereafter.
    - b. Blanket contractual liability coverage, including coverage of Contractor's contractual indemnity obligations in the General Conditions.
    - c. Severability of interests and no insured-versus-insured or cross-liability exclusions.
    - d. Underground, explosion, and collapse coverage.
    - e. Personal injury coverage.
  4. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
    - a. Modifications of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
    - b. Exclusion for water intrusion or water damage.
    - c. Provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
    - d. Exclusion of coverage relating to earth subsidence or movement.

- e. Exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than workers’ compensation).
  - f. Limitations or exclusions based on the nature of Contractor’s work.
  - g. Professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
5. Provide the following coverage with not less than the minimum limits indicated:

<b>Commercial General Liability Insurance</b>	<b>Policy Limits</b>
General Aggregate	\$2,000,000
Products - Completed Operations	\$2,000,000
Personal and Advertising Injury (Limit Per Person)	\$2,000,000
Bodily Injury and Property Damage – Each Occurrence	\$2,000,000

C. Automobile Liability:

1. Purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis. Coverage can be provided through individual limits for bodily injury and for property damage or a combined single limit covering both bodily injury and property damage.
2. Provide the following coverage with not less than the minimum limits indicated:

<b>Automobile Liability Insurance</b>	<b>Policy Limits</b>
<b>Bodily Injury</b>	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
<b>Property Damage</b>	
Each Accident	\$ 1,000,000
<b>Combined Single Limit</b>	
Combined Single Limit for Bodily Injury and Property Damage	\$ 1,000,000

D. Umbrella or Excess Liability:

1. Purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs A through C above. The coverage afforded must be at least as broad as that of each underlying policy.
2. Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of **\$(specify amount)** after accounting for partial attribution of its limits to underlying policies, as allowed above.

3. Provide the following coverage with not less than the minimum limits indicated:

<b>Umbrella or Excess Liability Insurance</b>	<b>Policy Limits</b>
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

- E. Contractor’s Pollution Liability Insurance:

1. Purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from the Contractor’s operations and completed operations. This insurance must be maintained for no less than 3 years after Final Completion.

2. Provide the following coverage with not less than the minimum limits indicated:

<b>Contractor’s Pollution Liability Insurance</b>	<b>Policy Limits</b>
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

- F. Contractor’s Professional Liability Insurance:

1. Purchase and maintain applicable professional liability insurance if Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of 2 years after Substantial Completion. The policy must pre-date the commencement of furnishing services on the Project.

2. Provide the following coverage with not less than the minimum limits indicated:

<b>Contractor’s Professional Liability Insurance</b>	<b>Policy Limits</b>
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

2.02 INSTALLATION FLOATER

- A. Provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (“Covered Property”). Coverage under the Contractor’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:

1. of the Contractor, and Covered Property of others that is in the Contractor’s care, custody, and control;
2. while in transit to the Site, including while at temporary storage sites;
3. while at the Site awaiting and during installation, erection, and testing;
4. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.

- B. The installation floater coverage cannot be contingent on an external cause or risk or limited to property for which Contractor is legally liable.

- C. The installation floater coverage will be in an amount sufficient to protect the Contractor’s interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.
- D. This policy will include a waiver of subrogation applicable to Owner, Contractor, Design Professional, all subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

2.03 OWNER’S LIABILITY INSURANCE

- A. Contractor is required to provide Owner’s Protective Liability Insurance coverage for at least the following amounts, unless greater amounts are required by Laws and Regulations.

<b>Owner’s Liability Insurance</b>	<b>Policy Limits</b>
General Aggregate	\$ 1,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$ 1,000,000

**END OF SECTION**

## 00 73 17 TEXAS WORKERS' COMPENSATION INSURANCE

### ARTICLE 1 – REQUIRED NOTICE

#### 1.01 Workers' Compensation Insurance Coverage

##### A. Definitions:

1. Certificate of coverage (“certificate”) - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form 81, DWC Form 82, DWC Form 83, or DWC Form 84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
  2. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
  3. Persons providing services on the project (“subcontractor” in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  2. no later than 7 days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
  - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 4. obtain from each other person with whom it contracts, and provide to the contractor:
    - a. a certificate of coverage, prior to the other person beginning work on the project; and
    - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - 7. contractually require each person with whom it contracts, to perform as required by paragraphs 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the

division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**END OF SECTION**

**00 73 43      WAGE RATE REQUIREMENTS**

**ARTICLE 1 – PAYMENT OF PREVAILING WAGE RATES**

- 1.01 Contractor and Subcontractors employed on this Project must pay not less than the rates established by the Owner as required by Tex. Gov't Code Chapter 2258.
- 1.02 The minimum wage rates for various labor classifications as established by the Owner are included in Section 00 73 46 "Wage Determination Schedule."

**ARTICLE 2 – PENALTY**

- 2.01 In accordance with Section 2258.023(b), any Contractor or Subcontractor who violates the requirements of Chapter 2258 shall pay the Owner \$60 for each worker employed or each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract.
- 2.02 Failure to comply with the requirements of Chapter 2258 may subject the Owner, Contractor, or Subcontractor(s) to additional civil and criminal penalties.

**ARTICLE 3 – RECORDS**

- 3.01 In accordance with Section 2258.024, the Contractor and its Subcontractors, if any, shall keep a record showing:
  - A. The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work; and
  - B. The actual per diem wages paid to each worker.
- 3.02 This record shall be open at all reasonable hours to inspection by the officers and agents of the OPT.

**ARTICLE 4 – ENFORCEMENT**

- 4.01 Owner will enforce the provisions related to the payment of prevailing wage rates as required by Chapter 2258, Subchapter C.
- 4.02 Owner may be required to withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the Contractor. If required, these amounts will be withheld from payments to the Contractor through a Set-off in accordance with the General Conditions.

**END OF SECTION**



Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	01/12/2024
2	04/05/2024
3	06/14/2024
4	07/05/2024
5	08/30/2024
6	11/08/2024
7	11/22/2024

ASBE0087-014 06/03/2024

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation).....	\$ 29.50	8.79

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

ELEC0060-003 01/01/2024

	Rates	Fringes
ELECTRICIAN (Communication Technician Only).....	\$ 33.50	18%+5.45

ELEC0060-004 01/01/2024

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring).....	\$ 33.50	18%+5.45

ELEV0081-001 01/01/2024

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 48.92	37.885+a+b

FOOTNOTES:

- a. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all worked hours.
- b. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

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ENGI0450-002 04/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Cranes.....	\$ 39.47	10.39

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\* IRON0066-013 06/01/2024

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 26.75	7.53

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\* IRON0084-011 06/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 28.26	8.13

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PLUM0142-009 07/01/2024

	Rates	Fringes
HVAC MECHANIC (Electrical Temperature Control Installation & Unit Installation Only).....	\$ 36.87	11.48
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 36.87	11.48
Including HVAC Pipe Installation		
PLUMBER.....	\$ 36.87	11.48
Excludes HVAC Pipe Installation		

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SFTX0669-002 04/01/2024

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 36.15	23.88

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SHEE0067-004 07/03/2024

	Rates	Fringes
Sheet metal worker Excludes HVAC Duct Installation.....	\$ 32.24	15.89
HVAC Duct Installation Only.	\$ 32.24	15.89

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\* SUTX2014-006 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 22.15	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 17.83	0.00
CARPENTER (Form Work Only).....	\$ 13.63 **	0.00
CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 16.86 **	4.17
CAULKER.....	\$ 15.00 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 22.27	5.30
DRYWALL FINISHER/TAPER.....	\$ 13.81 **	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 15.18 **	0.00
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 20.39	3.04
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
LABORER: Common or General.....	\$ 10.75 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.88 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.00 **	0.00
LABORER: Pipelayer.....	\$ 11.00 **	0.00
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
LABORER: Landscape and Irrigation.....	\$ 8.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 15.98 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 14.00 **	0.00
OPERATOR: Bulldozer.....	\$ 14.00 **	0.00

OPERATOR: Drill.....	\$ 14.50 **	0.00
OPERATOR: Forklift.....	\$ 12.50 **	0.00
OPERATOR: Grader/Blade.....	\$ 23.00	5.07
OPERATOR: Loader.....	\$ 12.79 **	0.00
OPERATOR: Mechanic.....	\$ 18.75	5.12
OPERATOR: Paver (Asphalt, Aggregate, and Concrete) .....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 12.00 **	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....	\$ 13.07 **	0.00
ROOFER.....	\$ 12.00 **	0.00
TILE FINISHER.....	\$ 11.32 **	0.00
TILE SETTER.....	\$ 14.94 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their

own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates

the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

#### State Adopted Rate Identifiers

Classifications listed under the "SA" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R §1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

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**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

## **01 11 00 SUMMARY OF WORK**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. Construct Work as described in the Contract Documents.
  - 1. Provide the materials, equipment, and incidentals required to make the Project completely and fully operable.
  - 2. Provide the labor, equipment, tools, and consumable supplies required for a complete Project.
  - 3. Provide the civil, architectural, structural, mechanical, electrical, instrumentation, and all other Work required for a complete and operable Project.
  - 4. Test and place the completed Project in operation.
  - 5. Provide the special tools, spare parts, lubricants, supplies, or other materials as indicated in the Contract Documents for the operation and maintenance of the Project.
  - 6. The Contract Documents do not indicate or describe all Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Construction Manager.
- B. Owner may pre-select or pre-purchase goods for this Project per Section 01 64 00 "Owner-Furnished Goods and Special Services." Install these goods and coordinate the performance of specified special services.

#### **1.02 DESCRIPTION OF WORK**

- A. Work is described in general, non-inclusive terms as:
  - 1. Install water relocations services for 351 homes in Alamo Heights. Extend line from the new water meter to the service connection at the existing water meter at approximate location show on the exhibits. Remove existing water meter when tying into the service line for each residence. Replace the disturbed areas to existing conditions when work is complete. All work will be done and paid with SAWS Item 823.
  - 2. Install BMP's along curb, inlets, and alley to prevent transport of sediment.
  - 3. Install traffic control for street closures to through traffic on the block that is being worked on.
  - 4. Maintain watering schedule until vegetation is established.

### **PART 2 - PRODUCTS (NOT USED)**

### **PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## 01 26 00 CHANGE MANAGEMENT

### PART 1 - GENERAL

#### 1.01 REQUESTS FOR CHANGE PROPOSAL

- A. Construction Manager will initiate Modifications by issuing a Request for Change Proposal (RCP).
  - 1. Construction Manager and Design Professional will prepare a description of proposed Modifications.
  - 2. Construction Manager will issue the Request for Change Proposal form to Contractor. A number will be assigned to the Request for a Change Proposal when issued.
  - 3. Return a Change Proposal in accordance with Paragraph **[1.02]** for evaluation by the OPT.

#### 1.02 CHANGE PROPOSALS

- A. Submit a Change Proposal (CP) to the Construction Manager for Contractor initiated changes in the Contract Documents or in response to a Request for Change Proposal. Submit the Change Proposal and attach the forms provided by the Construction Manager.
  - 1. Use the Change Proposal form provided by the Construction Manager.
  - 2. Include with the Change Proposal:
    - a. A complete description of the proposed Modification if Contractor initiated or proposed changes to the OPT's description of the proposed Modification.
    - b. The reason the Modification is requested, if not in response to a Request for a Change Proposal.
    - c. A detailed breakdown of the cost of the change if the Modification requires a change in Contract Price. The itemized breakdown is to include:
      - 1) List of materials and equipment to be installed;
      - 2) Man hours for labor by classification;
      - 3) Equipment used in construction;
      - 4) Consumable supplies, fuels, and materials;
      - 5) Royalties and patent fees;
      - 6) Bonds and insurance;
      - 7) Overhead and profit;
      - 8) Field office costs;
      - 9) Home office cost; and
      - 10) Other items of cost.
    - d. Provide the level of detail outlined in the paragraph above for each Subcontractor or Supplier actually performing the Work if Work is to be provided by a

Subcontractor or Supplier. Indicate appropriate Contractor mark ups for Work provided through Subcontractors and Suppliers. Provide the level of detail outlined in the paragraph above for self-performed Work.

- e. Submit Change Proposals that comply with the General Conditions for Cost of Work.
  - f. Provide a revised schedule. Show the effect of the change on the Project Schedule and the Contract Times.
- B. Submit a Change Proposal to the Construction Manager to request a Field Order.
  - C. A Change Proposal is required for all substitutions or deviations from the Contract Documents.
  - D. Request changes to products in accordance with Section 01 33 02 "Shop Drawings."

#### 1.03 CONSTRUCTION MANAGER WILL EVALUATE THE REQUEST FOR A MODIFICATION

- A. Construction Manager will issue a Modification per the General Conditions if the Change Proposal is acceptable to the Owner. Construction Manager will issue a Change Order or Contract Amendment for any changes in Contract Price or Contract Times.
  - 1. Change Orders and Contract Amendments will be sent to the Contractor for execution with a copy to the Owner recommending approval. A Work Change Directive may be issued if Work needs to progress before the Change Order or Contract Amendment can be authorized by the Owner.
  - 2. Work Change Directives, Change Orders, and Contract Amendments can only be approved by the Owner.
    - a. Work performed on the Change Proposal prior to receiving a Work Change Directive or approval of the Change Order or Contract Amendment is performed at the Contractor's risk.
    - b. No payment will be made for Work on Change Orders or Contract Amendments until approved by the Owner.
- B. Contractor may be informed that the Change Proposal is not approved and construction is to proceed in accordance with the Contract Documents.

#### 1.04 EQUAL NON-SPECIFIED PRODUCTS

- A. The products of the listed manufacturers are to be furnished where the Specifications list several manufacturers and do not specifically list "or equal" or "or approved equal" products. Use of any products other than those specifically listed is a substitution. Follow the procedures in Paragraph **[1.05]** for a substitution.
- B. Contractor may submit other manufacturers' products that are in full compliance with the Specifications where Specifications list one or more manufacturers followed by the phrase "or equal" or "or approved equal."
  - 1. Submit a Shop Drawing as required by Section 01 33 02 "Shop Drawings" to document that the proposed product is equal or superior to the specified product.

2. Prove that the product is equal. It is not the OPT's responsibility to prove the product is not equal.
  - a. Indicate on a point-by-point basis for each specified feature that the product is equal to the Contract Document requirements.
  - b. Make a direct comparison with the specified manufacturer's published data sheets and available information. Provide this printed material with the Shop Drawing.
  - c. The decision of the Design Professional regarding the acceptability of the proposed product is final.
3. Provide a certification that, in furnishing the proposed product as an equal, the Contractor:
  - a. Has thoroughly examined the proposed product and has determined that it is equal or superior in all respects to the product specified.
  - b. Has determined that the product will perform in the same manner and result in the same process as the specified product.
  - c. Will provide the same warranties and/or bonds as for the product specified.
  - d. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the product into the construction and will waive all claims for additional Work which may be necessary to incorporate the product into the Project which may subsequently become apparent.
  - e. Will maintain the same time schedule as for the specified product.
- C. A Change Proposal is not required for any product that is in full compliance with the Contract Documents. If the product is not in full compliance, it may be offered as a Substitution.

#### 1.05 SUBSTITUTIONS

- A. Substitutions are defined as any product that the Contractor proposes to provide for the Project in lieu of the specified product. Submit a Change Proposal per Paragraph **[1.02]** along with documents required for a Shop Drawing as required by Section 01 33 02 "Shop Drawings" to request approval of a substitution.
- B. Prove that the product is acceptable as a substitute. It is not the Design Professional's responsibility to prove the product is not acceptable as a substitute.
  1. Indicate on a point-by-point basis for each specified feature that the product is acceptable to meet the intent of the Contract Documents requirements.
  2. Make a direct comparison with the specified Suppliers published data sheets and available information. Provide this printed material with the Shop Drawing.
  3. The decision of the Design Professional regarding the acceptability of the proposed substitute product is final.

- C. Provide a certification that, in making the substitution request, the Contractor:
1. Has determined that the substituted product will perform in substantially the same manner and result in the same ability to meet the specified performance as the specified product;
  2. Will provide the same warranties and/or bonds for the substituted product as specified or as would be provided by the manufacturer of the specified product;
  3. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the substituted product into the Project and will waive all claims for additional Work which may be necessary to incorporate the substituted product into the Project which may subsequently become apparent; and
  4. Will maintain the same time schedule as for the specified product.
- D. Pay for review of substitutions in accordance with Section 01 33 02 "Shop Drawings."

**PART 2 - PRODUCTS (NOT USED)**

**PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## 01 29 00 APPLICATION FOR PAYMENT PROCEDURES

### PART 1 - GENERAL

#### 1.01 SUMMARY

- A. Submit Applications for Payment for completed Work and for materials and equipment in accordance with the General Conditions, the Supplementary Conditions, the Agreement, and this Section. The Contract Price is to include costs for:
1. Providing the Work in accordance with the Contract Documents;
  2. Installing Owner furnished equipment and materials, if any;
  3. Providing Work for alternates and allowances, if any;
  4. Providing Work for extra work items, if any and if authorized
  5. Commissioning, startup, training, and initial maintenance and operation;
  6. Acceptance testing at the manufacturer's facilities or at the Site;
  7. All home office overhead costs and expenses, including profit made directly or indirectly from the Project;
  8. Project management, contract administration, and field office and field operations staff including supervision, clerical support, and technology system support;
  9. Professional services including design fees, legal fees, and other professional services;
  10. Bonds and insurance;
  11. Permits, licenses, patent fees, and royalties;
  12. Taxes;
  13. Providing all documentation and Samples required by the Contract Documents;
  14. Facilities and equipment at the Site including:
    - a. Field offices, office furnishings, and all related office supplies, software, and equipment,
    - b. Storage facilities for Contractor's use and storage facilities for stored materials and equipment including spare parts storage,
    - c. Shops, physical plant, construction equipment, small tools, vehicles, and technology and telecommunications equipment,
    - d. Safety equipment and facilities to provide safe access and working conditions for workers and for others working at the Site,
    - e. Temporary facilities for power and communications,
    - f. Potable water and sanitation facilities, and
    - g. Mobilization and demobilization for all these facilities and equipment.
  15. Products, materials, and equipment stored at the Site or other suitable location in accordance with Section 01 31 00 "Project Management and Coordination";

16. Products, materials, and equipment permanently incorporated into the Project;
  17. Temporary facilities for managing water including facilities for pumping, storage, and treatment as required for construction and protection of the environment;
  18. Temporary facilities for managing environmental conditions and Constituents of Concern;
  19. Temporary facilities such as sheeting, shoring, bracing, formwork, embankments, storage facilities, working areas, and other facilities required for construction of the Project;
  20. Temporary and permanent facilities for protection of all overhead, surface, or underground structures or features;
  21. Temporary and permanent facilities for removal, relocation, or replacement of any overhead, surface, or underground structures or features;
  22. Products, materials, and equipment consumed during the construction of the Project;
  23. Contractor labor and supervision to complete the Project including that provided through Subcontractors or Suppliers;
  24. Correcting Defective Work during the Contract Times, during the Correction Period, or as required to meet any warranty provision of the Contract Documents;
  25. Risk associated with weather and environmental conditions, startup, and initial operation of facilities including equipment, processes, and systems;
  26. Contractor safety programs, including management, administration, and training;
  27. Maintenance of facilities including equipment, processes, and systems until operation is transferred to Owner;
  28. Warranties, extended or special warranties, or extended service agreements;
  29. Cleanup and disposal of any and all surplus materials; and
  30. Demobilization of all physical, temporary facilities not incorporated into the Project.
- B. Include the cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price.
- C. Provide written approval of the surety company providing performance and payment bonds for the Schedule of Values, Application for Payment form, and method of payment prior to submitting the first Application for Payment. Submit approval using the "Consent of Surety Company to Payment Procedures" form provided by the Construction Manager. Payment will not be made without this approval.
- D. Construction Manager may withhold processing the Applications for Payment if any of the following processes or documentation is not up to date:
1. Progress Schedule per Section 01 33 05 "Construction Progress Schedule."
  2. Project videos and photographs per Section 01 33 06 "Graphic Documentation."
  3. Record Documents per Section 01 31 13 "Project Administration."

## 1.02 SCHEDULE OF VALUES

- A. Divide the Contract Price into an adequate number of line items to allow more accurate determination of the earned value for each line item when evaluating progress payments. Submit a detailed Schedule of Values for the Project at least 10 days prior to submitting the first Application for Payment using forms provided by the Construction Manager.
- B. Do not apply for payment until the Schedule of Values has been approved by the Construction Manager.
- C. Divide the cost associated with each line item in the Schedule of Values into installation and materials components.
  - 1. Installation cost is to include all cost associated with the line item except materials cost.
  - 2. Materials cost is the direct cost (as verified by invoice values) for products, materials, and equipment to be permanently incorporated into the Project associated with the line item.
  - 3. Installation cost is to include all direct costs and a proportionate amount of the indirect costs for the Work associated with each line item. Include costs not specifically set forth as an individual payment item but required to provide a complete and functional system.
  - 4. The sum of materials and installation costs for all line items must equal the Contract Price.
- D. Use each unit price line item in the Agreement as a line item in the Schedule of Values. The sum of materials and installation costs for each line item for unit price contracts must equal the value of the line item in the Agreement. In addition to the installation cost described in Paragraph **[1.02.C.3]**, installation costs for unit price items are to include costs for waste and overages.
  - 1. Installation and materials cost may be left as a single installation component if:
    - a. Contractor does not intend to request payment for stored materials for that line item; or
    - b. Work in the line item will be completed within a single payment period.
  - 2. Provide adequate detail to allow a more accurate determination of the earned value for installation costs, expressed as a decimal fraction of Work completed, for each line item.
  - 3. Installation cost line items may not exceed \$50,000.00. Items that are not subdivided into smaller units may only be included in the Application for Payment when Work on the entire unit is complete.
  - 4. Lump sum items may be divided into an estimated number of units to estimate earned value. The estimated number of units times the cost per unit must equal the lump sum amount for that line item.
  - 5. Include Contractor's overhead and profit in the installation costs each line item in proportion to the value of the line item to the Contract Price.

6. Include cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price for each item.
  7. Line items may be used to establish the value of Work to be added or deleted from the Project.
- E. Include a breakdown of both mobilization and demobilization costs in the Schedule of Values. The total cost for both mobilization and demobilization may not exceed **10** percent of the total Contract Price. Payment for mobilization and demobilization will be based on the earned value of Work completed. Payment for these costs will only be made for Work completed for the following:
1. Bonds and insurance;
  2. Transportation and setup for equipment;
  3. Transportation and/or erection of all field offices, sheds, and storage facilities;
  4. Salaries for preparation of documents required before the first Application for Payment; and
  5. Salaries for field personnel directly related to the mobilization of the Project.

#### 1.03 SCHEDULE OF ANTICIPATED PAYMENTS

- A. Submit a schedule of the anticipated Application for Payments showing the anticipated application numbers, submission dates, and the amount to be requested for each Application for Payment on the form provided by the Construction Manager.
- B. Update the schedule of anticipated payments as necessary to provide a reasonably accurate indication of the funds required to make payments each month to the Contractor for Work performed.

#### 1.04 ALTERNATES, ALLOWANCES, AND EXTRA WORK ITEMS

- A. Include line items and amounts for specified alternate Work and allowances for Work in the Agreement, if any, and as described in Section 01 23 10 "Alternates and Allowances."
- B. Include line items and amounts for Extra Work items in the Agreement, if any, and as described in Section 01 29 01 "Measurement and Basis for Payment."

#### 1.05 RETAINAGE AND SET-OFFS

- A. Retainage will be withheld from each Application for Payment per the Agreement.
- B. Reduce payments for set-offs per the General Conditions as directed by the Construction Manager.

#### 1.06 PROCEDURES FOR SUBMITTING AN APPLICATION FOR PAYMENT

- A. Submit a draft Application for Payment to the Construction Manager each month at least **[20]** days before the date established in the Agreement for Owner to make progress payments. Do not submit Applications for Payment more often than monthly. Review the

draft Application for Payment with the Construction Manager to determine concurrence with:

1. Values requested for materials and equipment, stored or incorporated into the Project as documented by invoices;
  2. The earned value for installation costs for each line item in the Application for Payment form expressed as a percent complete for that line item;
  3. The quantity of Work completed for each unit price item;
  4. Amount of retainage to be withheld; and
  5. Set-offs included in the Application for Payment.
- B. Submit Applications for Payment to the Construction Manager after agreement has been reached on the draft Application for Payment with the Construction Manager.
- C. Provide all information requested in the Application for Payment form. Do not leave any blanks incomplete. If information is not applicable, enter "N/A" in the space provided.
1. Number each application sequentially and include the dates for the application period.
  2. Complete the "Contract Time Summary" section on the Application for Payment form. If the Final Completion date shows the Project is more than 30 days behind schedule, revise the Schedule of Anticipated Payments to correspond to the updated schedule required per Section 01 33 05 "Construction Progress Schedule."
  3. Complete the "Summary of Earned Value and Set-offs" section on the Application for Payment form. Show the total amounts for earned value of original Contract performed, earned value for Work on approved Contract Amendments and Change Orders, retainage and set-offs.
  4. Sign and date the Contractor's Certification on the Application for Payment form that all Work, including materials, covered by this Application for Payment have been completed or delivered and stored in accordance with the Contract Documents, that all amounts have been paid for Work, materials, and equipment for which previous Payment has been made by the Owner, and that the current payment amount shown in this Application for Payment is now due.
  5. Include "Attachment A - Tabulation of Earned Value of Original Contract Performed" to show the value of materials stored and successfully incorporated into the Project and the earned value for installation of the Work for each line item in the Application for Payment for Work. Attachment A includes Work on the original Contract Price and on approved Contract Amendments and Change Orders.
  6. Include "Attachment B - Tabulation of Values for Materials and Equipment" to track invoices used to support amounts requested as materials in Attachment A. Enter materials to show the amount of the invoice assigned to each item in Attachment A if an invoice includes materials used on several line items.
  7. Include "Attachment C - Summary of Set-offs" to document set-offs made per the Contract Documents. Show each set-off as it is applied. Show a corresponding line item to reduce the set-off amount if a payment held by a set-off is released for payment.

8. Include "Attachment D - Retainage Calculation" to show method for calculating retainage. The amount of retainage with respect to progress payments is stipulated in the Agreement. Any request for a reduction in retainage must be accompanied by a Consent of Surety to Reduction or Partial Release of Retainage.
  9. Include "Attachment E - EVA Calculation" and the EVA Chart showing the anticipated and actual total earned value of fees, Work, and materials. Create a graphic representation (curve) of the anticipated progress on the Project each month. Compare the anticipated cumulative total earned value of fees, Work, and materials to the actual total earned value of fees, Work, and materials to determine performance on budget and schedule. Adjust the table and curve to incorporate Modifications.
- D. Submit attachments in Portable Document Format (PDF).
1. Generate attachments to the Application for Payment using the Excel spreadsheet provided by the Construction Manager.
  2. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.

#### 1.07 ADJUSTMENTS TO THE SCHEDULE OF VALUES IN THE APPLICATION FOR PAYMENT

- A. Submit a Change Proposal to request any changes to the Schedule of Values incorporated into the Application for Payment once approved. A Field Order will be issued by the Construction Manager to modify the Application for Payment form if approved.
- B. Payment for materials and equipment shown in the Application for Payment will be made for the total of associated invoice amounts, up to the value shown for materials in the Application for Payment for that line item.
  1. If the total amount for invoices for materials and equipment for a line item are less than the amount shown for the materials component of that line item in the Application for Payment, and it can be demonstrated that no additional materials or equipment are required to complete Work described in that item, the difference between the total invoice for materials and equipment and the materials component for that line item can be added to the installation component of that Work item.
  2. Costs for material and equipment in excess of the value shown in the Schedule of Values may not be paid for under other line items.

#### 1.08 CONSTRUCTION MANAGER'S RESPONSIBILITY

- A. Construction Manager will review each draft Application for Payment with Contractor to reach an agreement on the amount to be recommended to Owner for payment. Contractor is to revise the Application for Payment to incorporate changes, if any, resulting from this review process.
- B. Construction Manager will review the Application for Payment to determine that the Application for Payment has been properly submitted and is in accordance with the agreed to draft Application for Payment.
- C. Construction Manager will either recommend payment of the Application for Payment to Owner or notify the Contractor of the reasons for not recommending payment. Contractor

may make necessary corrections and resubmit the Application for Payment. Construction Manager will review resubmitted Application for Payment and reject or recommend payment of the Application for Payment to Owner as appropriate.

- D. Construction Manager's recommendation of the Application for Payment constitutes a representation that based on its experience and the information available:
  - 1. The Work has progressed to the point indicated;
  - 2. The quality of the Work is generally in accordance with the Contract Documents; and
  - 3. Requirements prerequisite to payment have been met.
- E. This representation is subject to:
  - 1. Further evaluation of the Work as a functioning whole;
  - 2. The results of subsequent tests called for in the Contract Documents; or
  - 3. Any other qualifications stated in the recommendation.
- F. Construction Manager does not represent by recommending payment that:
  - 1. Inspections made to check the quality or the quantity of the Work as it was performed were exhaustive or extended to every aspect of the Work in progress; or
  - 2. Other matters or issues that might entitle Contractor to additional compensation or entitle Owner to withhold payment to Contractor exist.
- G. Neither Construction Manager's review of Contractor's Work for the purposes of recommending payments nor Construction Manager's recommendation of payment imposes responsibility on the Construction Manager or Owner:
  - 1. To supervise, direct, or control the Work;
  - 2. For the means, methods, techniques, sequences, or procedures of construction, or safety precautions and programs;
  - 3. For Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - 4. To make examinations to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract Price; or
  - 5. To determine that title to the Work, materials, or equipment has passed to Owner free and clear of Liens.

#### 1.09 FINAL APPLICATION FOR PAYMENT

- A. Include adjustments to the Contract Price in the final Application for Payment for:
  - 1. Approved Change Orders and Contract Amendments;
  - 2. Allowances not previously adjusted by Change Order;
  - 3. Deductions for Defective Work that have been accepted by the Owner;
  - 4. Penalties and bonuses;
  - 5. Deduction for all final set-offs; and

6. Other adjustments if needed.
- B. Construction Manager will prepare a final Change Order reflecting the approved adjustments to the Contract Price which have not been covered by previously approved Change Orders and, if necessary, to reconcile estimated unit price quantities with actual quantities.
- C. Submit the final Application for Payment per the General Conditions, including the final Change Order. Provide the following with the final Application for Payment:
  1. Evidence of payment or release of Liens on the forms provided by the Construction Manager and as required by the General Conditions.
  2. Consent from surety to final payment.
- D. Final payment will also require additional procedures and documentation per Section 01 70 00 "Execution and Closeout Requirements."

#### 1.10 PAYMENT BY OWNER

- A. Owner is to pay the amount recommended for monthly payments within 30 days after receipt of the Construction Manager's recommended Application for Payment.
- B. Final payment may take longer than 30 days since Owner's **Council** must approve final payment.

#### **PART 2 - PRODUCTS (NOT USED)**

#### **PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## **01 29 01 MEASUREMENT AND BASIS FOR PAYMENT**

### **PART 1 - GENERAL**

#### **1.01 PAYMENT FOR MATERIALS AND EQUIPMENT**

- A. Payment will be made for materials and equipment materials properly stored and successfully incorporated into the Project less the specified retainage.
- B. Provide a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of Liens. Provide documentation of payment for materials and equipment with the next Application for Payment. Remove items from the tabulation of materials and equipment if this documentation is not provided with the next Application for Payment.
- C. Provide evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest.
- D. The Work covered by progress payments becomes the property of the Owner at the time of payment. The Contractor's obligations with regard to proper care and maintenance, insurance, and other requirements are not changed by this transfer of ownership until final acceptance in accordance with the General Conditions.
- E. Payment for materials and equipment does not constitute acceptance of the product.

#### **1.02 MEASUREMENT AND BASIS FOR PAYMENTS ON UNIT PRICE ITEMS**

- A. Measure the Work using the unit of measure indicated in this Section for each unit price line item. Payment will be made only for the actual measured unit and/or computed length, area, solid contents, number, and weight unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside dimensions shown in the Contract Documents.
- B. Payment will be made for the actual quantity of Work completed and for materials and equipment stored during the payment period. Payment amount is the Work quantity measured per Paragraph A above multiplied by the unit price for that line item in the Agreement.

### **PART 2 - PRODUCTS (NOT USED)**

### **PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## 01 31 00 PROJECT MANAGEMENT AND COORDINATION

### PART 1 - GENERAL

#### 1.01 SUMMARY

- A. Furnish resources required to complete the Project in accordance with the Contract Documents and within the Contract Times.
- B. Construct Project in accordance with current safety practices.
- C. Manage Site to allow access to Site and control construction operations.
- D. Construct temporary facilities to provide and maintain control over environmental conditions at the Site. Remove temporary facilities when no longer needed.
- E. Provide temporary controls for pollution, management of water, and management of excess earth as required in Section 01 57 00 "Temporary Controls."

#### 1.02 STANDARDS

- A. Perform Work to comply with:
  - 1. Requirements of the Contract Documents;
  - 2. Laws and Regulations; and
  - 3. Specified industry standards.

#### 1.03 DOCUMENTATION

- A. Provide documents in accordance with Section 01 33 00 "Document Management."
- B. Provide copies of Supplier's printed storage instructions prior to furnishing materials or products and installation instructions prior to beginning the installation.
- C. Incorporate field notes, sketches, recordings, and computations made by the Contractor in Record Drawings per Section 01 31 13 "Project Administration."

#### 1.04 PERMITS

- A. Obtain building permits for the Project from the local authorities having jurisdiction. **Pay building permit fees and include these costs in the Contract Price.**
- B. Obtain environmental permits required for construction at the Site.
- C. Provide required permits for transporting heavy or oversized loads.
- D. Provide other permits required to conduct any part of the Work.
- E. Arrange for inspections and certification by agencies having jurisdiction over the Work and include the cost for these inspections and certifications in the Contract Price.
- F. Make arrangements with private utility companies and pay fees associated with obtaining services or inspections.
- G. Retain copies of permits and licenses at the Site and comply with all regulations and conditions of the permit or license.

#### 1.05 SAFETY REQUIREMENTS

- A. Manage safety to protect the safety and welfare of persons at the Site.
- B. Provide safe access to move through the Site. Provide protective devices to warn and protect from hazards at the Site.
- C. Provide safe access for those performing tests and inspections.
- D. Maintain a supply of personal protective equipment for visitors to the Site.
- E. Comply with latest provisions of the Occupational Health and Safety Administration (OSHA) and other Laws and Regulations.
- F. Cooperate with accident investigations. Provide two copies of all reports, including insurance company reports, prepared concerning accidents, injuries, or deaths related to the Project to the Construction Manager as Record Data per Section 01 31 13 "Project Administration."

#### 1.06 ACCESS TO THE SITE

- A. Maintain access to the facilities at all times. Do not obstruct roads, pedestrian walks, or access to the various buildings, structures, stairways, or entrances. Provide safe access for normal operations during construction.
- B. Provide adequate and safe access for inspections. Leave ladders, bridges, scaffolding, and protective equipment in place until inspections have been completed. Construct additional safe access if required for inspections.
- C. Use roadways for construction traffic only with written approval of the appropriate representatives of each entity. Roadways may not be approved for construction traffic. Obtain written approval to use roads to deliver heavy or oversized loads to the Site. Furnish copies of the written approvals to the Construction Manager as Record Data per Section 01 31 13 "Project Administration."

#### 1.07 CONTRACTOR'S USE OF THE SITE

- A. Limit the use of Site for Work and storage to those areas designated on the Drawings or approved by the Construction Manager. Coordinate the use of the Site with the Construction Manager.
- B. Provide security at the Site as necessary to protect against vandalism and loss by theft.
- C. Park construction equipment in designated areas only and provide spill control measures as discussed in Section 01 57 00 "Temporary Controls."
- D. Park employees' vehicles in designated areas only.
- E. Obtain written permission of the property owner before entering privately-owned land outside of the Owner's property, rights-of-way, or easements.
- F. Cooperate with public and private agencies with facilities operating within the limits of the Project. Provide 48 hours' notice to any applicable agency when Work is anticipated to proceed in the vicinity of any facility by using **811**.

G. Conduct of Contractor's or Subcontractor's Employees:

1. Do not permit alcoholic beverages or illegal substances on the Site. Do not allow persons under the influence of alcoholic beverages or illegal substances to enter or remain on the Site at any time. Persons on Site under the influence of alcoholic beverages or illegal substances will be permanently prohibited from returning to the Site. Criminal or civil penalties may also apply.
2. Do not allow the use of offensive language or sexual harassment in any form. These actions will cause immediate and permanent removal of the offender from the premises. Criminal or civil penalties may apply.
3. Require workers to wear clothing that is inoffensive and meets safety requirements. Do not allow sleeveless shirts, shorts, or any exceedingly torn, ripped, or soiled clothing to be worn on the Site.
4. Do not allow the use, possession, concealment, transportation, promotion, or sale of the following prohibited items anywhere on the Site:
  - a. Firearms (including air rifles and pistols and BB or pellet guns) and ammunition;
  - b. Bows, crossbows, arrows, bolts, or any other projectile weapons;
  - c. Explosives of any kind, including fireworks;
  - d. Illegal knives;
  - e. Other weapons prohibited by state Laws and Regulations; and
  - f. Any other item that has been designed or intended to be used as a weapon.

No exceptions will be made for the possession of a firearm by a person that has a valid state-issued license to carry a firearm. Remove any of the prohibited items listed above from the Site immediately and permanently. Any person found to be in possession of any prohibited item must also be removed from the Site and may be reported to local law enforcement.

1.08 PROTECTION OF EXISTING STRUCTURES AND UTILITIES

- A. Examine the Site and review the available information concerning the Site. Locate utilities, underground facilities, and existing structures. Verify the elevations of the structures adjacent to excavations. Report any discrepancies from information in the Contract Documents to the Construction Manager before beginning construction.
- B. Determine if existing structures, poles, piping, or other utilities at excavations will require relocation or replacement. Prepare a Plan of Action per Section 01 31 13 "Project Administration." Coordinate Work with local utility company and others for the relocation or replacement.
- C. Protect utilities, underground facilities and existing structures unless they are shown to be replaced or relocated on the Drawings. Restore damaged items to the satisfaction of the Owner and utility or property owner.
- D. Carefully support and protect all structures and/or utilities so that there will be no failure or settlement where excavation or demolition endangers adjacent structures and utilities. Do not take existing utilities out of service unless required by the Contract Documents or

approved by the Construction Manager. Notify and cooperate with the utility owner if it is necessary to move services, poles, guy wires, pipelines, or other obstructions.

- E. Protect existing trees and landscaping at the Site. Mark trees that may be removed during construction and review with the Construction Manager for approval before removing. Protect trees to remain from damage limiting activity, including stockpiling of materials within the drip line of the tree.
- F. Protect buildings from damage when handling material or equipment. Protect finished surfaces, including floors, doors, and jambs. Remove doors and install temporary wood protective coverings over jambs, if needed.

#### 1.09 DISRUPTION TO SERVICES/CONTINUED OPERATIONS

- A. Owner's facilities are to continue in service as usual during the construction unless noted otherwise. Owner or utilities must be able to operate and maintain the facilities. Keep disruptions to existing utilities, piping, process piping, or electrical services to a minimum.
  - 1. Do not restrict access to critical valves, operators, or electrical panels.
  - 2. Do not store material or products inside structures unless authorized by the Construction Manager.
  - 3. Limit operations to the minimum amount of space needed to complete the specified Work.
  - 4. Maintain storm sewers and sanitary sewers in service at all times. Provide temporary service around the construction or otherwise construct the Work in a manner that flow is not restricted.
- B. Provide a Plan of Action in accordance with Section 01 35 00 "Special Procedures" if facilities must be taken out of operation.

#### 1.10 FIELD VERIFICATION

- A. Perform complete field measurements prior to purchasing products or beginning construction for products required to fit existing conditions.
- B. Verify property lines, control lines, grades, and levels indicated on the Drawings.
- C. Verify pipe class, equipment capacities, existing electrical systems, and power sources for existing conditions.
- D. Check Shop Drawings and indicate the actual dimensions available where products are to be installed.
- E. Include field measurements in Record Documents as required in Section 01 31 13 "Project Administration."

#### 1.11 REFERENCE DATA AND CONTROL POINTS

- A. Construction Manager will provide the following control points:
  - 1. Base line or grid reference points for horizontal control.
  - 2. Benchmarks for vertical control.

- B. Locate and protect control points prior to starting the Work and preserve permanent reference points during construction. Designated control points may be on an existing structure or monument. Do not change or relocate points without prior approval of the Construction Manager. Notify Construction Manager when a reference point is lost, destroyed, or requires relocation. Replace Project control points on the basis of the original survey. Control points or benchmarks damaged, disturbed or destroyed as a result of the Contractor's negligence will be restored by the Construction Manager. Owner will impose a set-off as compensation for the effort required.
- C. Provide complete engineering layout of the Work needed for construction.
  - 1. Provide competent personnel. Provide equipment including accurate surveying instruments, stakes, platforms, tools, and materials.

#### 1.12 DELIVERY AND STORAGE

- A. Deliver products and materials to the Site in time to prevent delays in construction.
- B. Deliver packaged products to Site in original undamaged containers with identifying labels attached. Open cartons as necessary to check for damage and to verify invoices. Reseal cartons and store properly until used. Leave products in original packages or other containers until installed. If original packages or containers are damaged, repackage in containers and include packing slips, labels and other information from the original packaging.
- C. Deliver products that are too large to fit through openings to the Site in advance of the time enclosing walls and roofs are erected. Set in place, raised above floor on cribs or pallets.
- D. Assume full responsibility for the protection and safekeeping of products stored at the Site.
- E. Store products at locations acceptable to the Construction Manager and to allow Owner access to maintain and operate existing facilities.
- F. Store products in accordance with the Supplier's storage instructions immediately upon delivery. Leave seals and labels intact. Arrange storage to allow access for maintenance of stored items and for inspection. Store unpacked and loose products on shelves, in bins, or in neat groups of like items.
- G. Provide additional storage areas as needed for construction. Store products subject to damage by elements in substantial weather-tight enclosures or storage sheds. Provide and maintain storage sheds as required for the protection of products. Provide temperature, humidity control, and ventilation within the ranges stated in the Supplier's instructions. Remove storage facilities at the completion of the Project.
- H. Protect the pipe interior. Keep all foreign materials such as dirt, debris, animals, or other objects out of the pipe during the Work.
- I. Provide adequate exterior storage for products that may be stored out-of-doors.
  - 1. Provide substantial platforms, blocking, or skids to support materials and products above ground which has been sloped to provide drainage. Protect products from soiling or staining.

2. Cover products subject to discoloration or deterioration from exposure to the elements, with impervious sheet materials. Provide ventilation to prevent condensation below covering.
  3. Store loose, granular materials on clean, solid surfaces, or on rigid sheet materials, to prevent mixing with foreign matter.
  4. Provide surface drainage to prevent erosion and ponding of water.
  5. Prevent mixing of refuse or chemically injurious materials or liquids with stored materials.
  6. Pipes and conduits stored outdoors are to have open ends sealed to prevent the entrance of dirt, moisture, and other injurious materials. Protect PVC pipe from ultraviolet light exposure.
  7. Store products to prevent wind damage.
- J. Protect and maintain mechanical and electrical equipment in storage.
1. Provide Supplier's service instructions on the exterior of the package.
  2. Service equipment on a regular basis as recommended by the Supplier. Maintain a log of maintenance services. Submit the log as Record Data per Section 01 31 13 "Project Administration" when Owner assumes responsibility for maintenance and operation.
  3. Provide power to and energize space heaters for all equipment for which these devices are provided.
  4. Provide temporary enclosures for all electrical equipment, including electrical systems on mechanical devices. Provide and maintain heat in the enclosures until equipment is energized.
- K. Maintain storage facilities. Inspect stored products on a weekly basis and after periods of severe weather to verify that:
1. Storage facilities continue to meet specified requirements;
  2. Supplier's required environmental conditions are continually maintained; and
  3. Products that can be damaged by exposure to the elements are not adversely affected.
- L. Replace any stored item damaged by inadequate protection or environmental controls.
- M. Payment may be withheld for any products not properly stored.

#### 1.13 CLEANING DURING CONSTRUCTION

- A. Provide positive methods to minimize raising dust from construction operations and provide positive means to prevent air-borne dust from discharging into the atmosphere. Control dust and dirt from demolition, cutting, and patching operations.
- B. Clean the Site as Work progresses and dispose of waste materials, keeping the Site free from accumulations of waste or rubbish. Provide containers at the Site for waste collection. Do not allow waste materials or debris to blow around or off of the Site. Control dust from waste materials. Transport waste materials with as few handlings as possible.

- C. Comply with Laws and Regulations. Do not burn or bury waste materials. Remove waste materials, rubbish, and debris from the Site and legally dispose of these at public or private disposal facilities.

#### 1.14 MAINTENANCE OF ROADS, DRIVEWAYS, AND ACCESS

- A. Maintain roads and streets in a manner that is suitable for safe operations of public vehicle during all phases of construction unless the Owner approves a street closing. Do not close public roads overnight. Coordinate and arrange for emergency vehicle access when streets are to be closed.
- B. Submit a Notification by Contractor for Owner's approval of a street closing. The request must state:
  - 1. The reason for closing the street.
  - 2. How long the street will remain closed.
  - 3. Procedures to be taken to maintain the flow of traffic.
- C. Obtain permits and permissions of the entity that owns the road prior to any Work and provide a copy of the permit or permission Record Data per Section 01 31 13 "Project Administration."
- D. Construct temporary detours, including by-pass roads around construction, with adequately clear width to maintain the free flow of traffic at all times. Maintain barricades, signs, and safety features around the detour and excavations. Maintain barricades, signs, and safety features around the Work in accordance with all provisions of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD).
- E. Assume responsibility for any damage resulting from construction along roads or drives.

#### 1.15 BLASTING

- A. Blasting is not allowed for any purpose.

#### 1.16 ARCHAEOLOGICAL REQUIREMENTS

- A. Cease operations immediately and contact the Owner for instructions if historical or archaeological artifacts are found during construction.
- B. Conduct all construction activities to avoid adverse impact of the sites where significant historical or archaeological artifacts are found or identified as an area where other artifacts could be found.
  - 1. Obtain details for working in these areas from regulatory agencies.
  - 2. Maintain confidentiality regarding the site(s) of artifacts.
  - 3. Adhere to the requirements of applicable local, state, and federal Laws and Regulations.
  - 4. Notify the Construction Manager and any local, state, or federal agency as required by applicable Laws and Regulations.
- C. Do not disturb archaeological sites.

1. Obtain the services of a qualified archaeological specialist to instruct construction personnel on how to identify and protect archaeological finds on an emergency basis.
2. Coordinate activities to permit archaeological work to take place within the area.
  - a. Attempt to archaeologically clear areas needed for construction as soon as possible.
  - b. Provide a determination of priority for such areas.
- D. Assume responsibility for any unauthorized destruction that might result to such sites by construction personnel, and pay all penalties assessed by state or federal agencies for non-compliance with these requirements.
- E. Contract Times will be modified to compensate for delays caused by such archaeological finds. No additional compensation will be paid for delays.

1.17 ENDANGERED SPECIES RESOURCES

- A. Do not perform any activity that is likely to destroy or adversely modify the habitat or jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA) or applicable state Laws and Regulations.
- B. Cease Work immediately in the area of the encounter and notify the Construction Manager if a threatened or endangered species is encountered during construction. Construction Manager will implement actions in accordance with the ESA and applicable state statutes. Resume construction in the area of the encounter when authorized to do so by the Construction Manager.

**PART 2 - PRODUCTS (NOT USED) PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## **01 31 13 PROJECT ADMINISTRATION**

### **PART 1 - GENERAL**

#### **1.01 WORK INCLUDED**

- A. Administer contract requirements to construct the Project. Provide documentation per the requirements of this Section. Provide information as requested by the OPT.

#### **1.02 DOCUMENTATION**

- A. Provide documents in accordance with Section 01 33 00 "Document Management."

#### **1.03 COMMUNICATION DURING THE PROJECT**

- A. Construction Manager is to be the first point of contact for all parties on matters concerning this Project.
- B. Construction Manager will coordinate correspondence concerning:
  - 1. Contract administration;
  - 2. Clarification and interpretation of the Contract Documents;
  - 3. Contract modifications;
  - 4. Observation of Work and testing; and
  - 5. Claims.
- C. Construction Manager will normally communicate only with the Contractor. Any required communication with Subcontractors or Suppliers will only be with the direct involvement of the Contractor.
- D. Direct written communications to the Construction Manager at the address indicated at the pre-construction conference. Include the following with communications as a minimum:
  - 1. Name of the Owner;
  - 2. Project name;
  - 3. Contract title;
  - 4. Project number;
  - 5. Date; and
  - 6. A reference statement.
- E. Submit communications on the forms referenced in this Section or in Section 01 33 00 "Document Management."

#### **1.04 PROJECT MEETINGS**

- A. Pre-Construction Conference:
  - 1. Attend a pre-construction conference;
  - 2. The location of the conference will be determined by the Construction Manager;

3. The time of the conference will be determined by the Construction Manager, but will be after the Notice of Award is issued and not later than 15 days after the Notice to Proceed is issued;
  4. OPT, Contractor's project manager and superintendent, representatives of utility companies, and representatives from major Subcontractors and Suppliers may attend the conference; and
  5. Provide and be prepared to discuss:
    - a. Preliminary construction schedule per Section 01 33 05 "Construction Progress Schedule";
    - b. Preliminary Schedule of Documents per Section 01 33 00 "Document Management";
    - c. Schedule of Values and anticipated schedule of payments per Section 01 29 00 "Application for Payment Procedures";
    - d. List of Subcontractors and Suppliers;
    - e. Contractor's organizational chart as it relates to this Project; and
    - f. Letter indicating the agents of authority for the Contractor and the limit of that authority with respect to the execution of legal documents, contract modifications, and payment requests.
- B. Progress Meetings:
1. Attend meetings with the Construction Manager, Design Professional, and Owner.
    - a. Meet as requested by the Construction Manager to discuss the Project.
    - b. Meet at the Site or other location as designated by the Construction Manager.
    - c. Contractor's superintendent and other key personnel are to attend the meeting. Other individuals may be requested to attend to discuss specific matters.
    - d. Notify the Construction Manager of any specific items to be discussed a minimum of 1 week prior to the meeting.
  2. Provide information as requested by the Construction Manager, Design Professional or Owner concerning this Project. Prepare to discuss:
    - a. Status of overall project schedule;
    - b. Contractor's detailed schedule for the next month;
    - c. Anticipated delivery dates for equipment;
    - d. Coordination with the Owner;
    - e. Status of documents;
    - f. Information or clarification of the Contract Documents;
    - g. Claims and proposed modifications to the Contract;
    - h. Field observations, problems, or conflicts; and
    - i. Maintenance of quality standards.

3. Construction Manager will prepare a record of meeting proceedings. Review the record of the meeting and notify the Construction Manager of any discrepancies within 10 days of the date the record of the meeting is provided. The record will not be corrected after the 10 days have expired. Corrections will be reflected in the record of the following meeting.
- C. Coordination Meetings: Meet on an as-needed basis with the Construction Manager or designated on-site representative of the OPT to discuss Work planned for the following week, review coordination issues, testing required, or other issues. Records of these meetings are not required.

#### 1.05 REQUESTS FOR INFORMATION

- A. Submit a Request for Information to the Construction Manager to obtain additional information or clarification of the Contract Documents.
1. Submit a separate Request for Information for each item on the form provided by the Construction Manager.
  2. Attach adequate information to permit a response without further clarification. Construction Manager will return requests that do not have adequate information to the Contractor for additional information. Contractor is responsible for all delays resulting from multiple reviews due to inadequate information.
  3. A response will be made when adequate information is provided. The response will be made on the Request for Information form provided by the Construction Manager.
- B. Response to a Request for Information is given to provide additional information, interpretation, or clarification of the requirements of the Contract Documents, and does not modify the Contract Documents.
1. Submit a Change Proposal per Section 01 26 00 "Change Management" if a contract modification is suggested or required.

#### 1.06 NOTIFICATION BY CONTRACTOR

- A. Notify the Construction Manager of:
1. Need for testing;
  2. Intent to work outside regular working hours;
  3. Request to shut down facilities or utilities;
  4. Proposed utility connections;
  5. Required observation by Construction Manager, Engineer, or inspection agencies prior to covering Work; and
- B. Provide notification a minimum of 2 weeks in advance to allow OPT time to respond appropriately to the notification.
- C. Use the Notification by Contractor form provided by the Construction Manager.

1.07 REQUESTS FOR MODIFICATIONS

- A. Submit requests for Modifications per Section 01 26 00 "Change Management."

1.08 RECORD DATA

- A. Submit information required by the Contract Documents that is not related to a product as Record Data using the form provided by the Construction Manager.

1.09 RECORD DOCUMENTS

- A. Maintain one complete set of printed Record Documents at the Site including:
  - 1. Drawings;
  - 2. Specifications;
  - 3. Addenda;
  - 4. Modifications;
  - 5. Product Data and approved Shop Drawings;
  - 6. Project video (thumb drive);
  - 7. Test Reports;
  - 8. Clarifications and other information provided in Request for Information responses; and
  - 9. Reference standards.
- B. Maintain Record Documents and Samples.
  - 1. Record Documents are to remain separate from documents used for construction.
  - 2. Provide files and racks for the storage of Record Documents.
  - 3. Provide a secure storage space for the storage of Samples.
  - 4. Maintain Record Documents in clean, dry, legible conditions, and in good order.
  - 5. Make Record Documents and Samples available at all times for inspection by the OPT.
- C. Maintain an electronic record of Specifications and Addenda to identify products provided in PDF format.
  - 1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
  - 2. Reference Modifications by type and number for all changes.
- D. Maintain an electronic record of Drawings in PDF format.
  - 1. Reference the Product Data number, Shop Drawing number, and O&M manual number for each product and item of equipment furnished or installed.
  - 2. Reference Modifications by type and number for all changes.
  - 3. Record information as construction is being performed. Do not conceal any Work until the required information is recorded.

4. Mark Drawings with the following colors:
    - a. Highlight references to other documents, including Modifications in blue.
    - b. Highlight mark ups for new or revised Work (lines added) in yellow.
    - c. Highlight items deleted or not installed (lines to be removed) in red.
    - d. Highlight items constructed per the Contract Documents in green.
  5. Submit Record Documents to Construction Manager for review and acceptance 30 days prior to Final Completion of the Project.
- E. Applications for Payment will not be recommended for payment if Record Documents are found to be incomplete or not in order. Final payment will not be recommended without complete Record Documents.

**PART 2 - PRODUCTS (NOT USED)**

**PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## 01 33 00 DOCUMENT MANAGEMENT

### PART 1 - GENERAL

#### 1.01 SUMMARY

- A. Submit documentation as required by the Contract Documents and as requested by the Construction Manager.
- B. Use the Project Management Information System (PMIS) provided by the **Engineer**. Software for the PMIS is **FNiManager** which has the following system requirements:
  - 1. Operating Systems: Windows 7 or later and OS X v10.8 or later.
  - 2. Supported Internet Browsers: Internet Explorer 11.0 or later, Google Chrome 70.0 or later, Firefox 63.0 or later, Safari 11.0 or later, and Microsoft Edge 17.0 or later.
  - 3. Screen Resolution: The recommended screen resolution is 1280 x 1024 or higher. The minimum screen resolution required to support all features is 1024 x 768.

#### 1.02 QUALITY ASSURANCE

- A. Submit legible, accurate, complete documents presented in a clear, easily understood manner. Documents not meeting these criteria will be returned without review as "Not Approved."

#### 1.03 CONTRACTOR'S RESPONSIBILITIES

- A. Review documents prior to submission. Make certifications as required by the Contract Documents and as indicated on Construction Manager provided forms.
- B. Provide a Schedule of Documents to list the documents that are to be submitted and the dates on which documents are to be sent to the Construction Manager for review. Use the form provided by the Construction Manager for this list.
- C. Incorporate the dates for processing documents into the Progress Schedule required by Section 01 33 05 "Construction Progress Schedule."
  - 1. Provide documents in accordance with the schedule so construction of the Project is not delayed.
  - 2. Allow a reasonable time for the review of documents when preparing the Progress Schedule. Assume a 14-day review cycle for each document unless a longer period of time is indicated in the Contract Documents or agreed to by Construction Manager and Contractor.
  - 3. Schedule delivery of review documents to provide all information for interrelated Work at one time.
  - 4. Allow adequate time for processing documents so construction of the Project is not delayed.

1.04 FORMS AND WORKFLOWS

- A. Use the forms or workflow process provided by the Construction Manager for project documentation.

1.05 DOCUMENT PREPARATION AND DELIVERY PROCEDURES

- A. Deliver documents in electronic format as directed by the Construction Manager.
  - 1. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.
  - 2. Deliver all documents in Portable Document Format (PDF).
    - a. Create PDF document using Bluebeam Revu software.
    - b. Create PDF documents from native format files unless files are only available from scanned documents.
    - c. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.
    - d. Provide PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
    - e. Submit color PDF documents where color is required to interpret the document.
    - f. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.
    - g. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.
    - h. Use Bluebeam Revu software to reduce file size using default settings except the option for "Drop Metadata". Uncheck the "Drop Metadata" box when reducing file size.
    - i. Add footers to each document with the name of the Project.

1.06 DOCUMENT NUMBERING

- A. Assign a document number to the Contractor originated document to allow tracking of the document during the review process.
  - 1. Assign the number consisting of a prefix, a sequence number, and a letter suffix. Prefixes will be as follows:

Prefix	Description
AP	Application for Payment
CP	Change Proposal
CTR	Certified Test Report
EIR	Equipment Installation Report
GD	Graphic Documentation

Prefix	Description
NBC	Notification by Contractor
O&M	Operation and Maintenance Manuals
PD	Product Data
RD	Record Data
RFI	Request for Information
SD	Shop Drawing
SCH	Schedule of Progress

2. Issue sequence numbers in chronological order for each type of document as directed by the Construction Manager.
  3. Issue numbers for resubmittals that have the same number as the original document followed by an alphabetical suffix indicating the number of times the same document has been sent to the Construction Manager for processing. For example: SD-025 A represents Shop Drawing number 25 and the letter "A" designates this is the second time this document has been sent for review.
  4. Clearly note the document number on each page or sheet of the document.
  5. Correct assignment of numbers is essential since different document types are processed in different ways.
- B. Include reference to the Drawing number and/or Specification Section, detail designation, schedule, or location that corresponds with the data submitted on the Document Transmittal form. Other identification may also be required, such as layout drawings or schedules to allow the reviewer to determine where a particular product is to be used.

#### 1.07 DOCUMENTATION

- A. Furnish documents as indicated in Section 01 33 01 "Document Register" or in the individual Specification Sections. Submit documents per the procedures described in the Contract Documents.
- B. Submit documents per the Specification Sections shown in the following table:

Document Type	Specification Section
Application for Payment	01 29 00
Certified Test Report	01 33 02 for approval of product 01 40 00 to demonstrate compliance
Change Management	01 26 00
Equipment Installation Report	01 75 00
Graphic Documentation	01 33 06
Notification by Contractor	01 31 13
Operation & Maintenance Manuals	01 33 04
Product Data	01 33 03
Progress Schedules	01 33 05
Record Data	01 31 13
Request for Information	01 31 13
Schedule of Values	01 29 00

Document Type	Specification Section
Shop Drawing	01 33 02
Substitutions	01 26 00
Suppliers and Subcontractors	01 31 13 01 33 03

1.08 Electronic Documents Protocol

- A. The parties shall follow the provisions in this Section, referred to as the Electronic Documents Protocol (“EDP”), for exchange of electronic transmittals.
- B. Basic Requirements:
1. Except as otherwise stated elsewhere in the Contract Documents, the OPT and Contractor will send and accept Electronic Documents sent by Electronic Means using the protocols provided in this Section.
  2. The contents of the information in any Electronic Document will be the responsibility of the transmitting party. Electronic Documents may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, and are subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
  3. Provisions of this Contract regarding Electronic Documents must be incorporated into other agreements or subcontracts on the Project. Nothing in this paragraph reduces or eliminates requirements:
    - a. to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations;
    - b. to comply with any applicable Law or Regulation governing the signing and sealing of design documents and related Modifications or the signing and electronic transmission of any other documents; or
    - c. to comply with the notice requirements.
  4. When sending Electronic Documents by Electronic Means the sending 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 sending Electronic Documents.
- C. System Infrastructure for Electronic Document Exchange:
1. Contractor will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions (“System Infrastructure”) at its own cost. System Infrastructure must comply with these requirements.
  2. The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **[100]** MB. Attachments larger than that may be exchanged in parts or by using large file transfer functions or physical media.
  3. Contractor assumes full and complete responsibility for its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying,

licensing, or otherwise enabling its System Infrastructure, including operating systems and software.

4. Contractor is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology (“IT”) for maintaining operations of its System Infrastructure during the Project, including coordination with individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
  5. Contractor will operate and maintain industry-standard, industry-accepted, ISO standard, commercial-grade security software and systems that are intended to protect others from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. Contractor will not be liable to others for any breach of system security to the extent that Contractor maintains and operates required security software and systems.
  6. In the case of disputes, conflicts, or modifications to the use of Electronic Documents required to address issues affecting System Infrastructure, Contractor and OPT will cooperatively resolve the issues; but, failing resolution, OPT is authorized to make and require reasonable and necessary changes meet its original intent. Contractor may submit a Change Proposal if the changes cause additional cost or time to Contractor that could not have reasonably been anticipated.
  7. Contractor and OPT are both responsible for their own back-up and archive of documents sent and received during the term of the contract. Contractor and OPT remain solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract as each party deems necessary for its own purposes.
  8. If a Contractor or OPT receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
  9. OPT will operate a project information management system (Project Website) for use of OPT and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this Contract, use of the Project Website will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information.
- D. Software Requirements:
1. OPT and Contractor will each acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic

Documents received from the other party (and if relevant from third parties), using the following software formats:

<b>Document</b>	<b>Document Format</b>
Email	.htm, .rtf, or .txt without formatting that impair legibility of content on screen or in printed copies
Submittals	Bluebeam PDF
Applications for Payment	Bluebeam PDF and Microsoft® Excel
Progress Schedules	PDF and Schedule in Schedule in Native Format
Layouts and drawings to be submitted to Owner for future use and modification	Autodesk® AutoCAD .dwg format
Document submitted to OPT for future word processing use and modification	Microsoft® Word
Spreadsheets and data submitted to OPT for future data processing use and modification	Microsoft® Excel
Photographs	.jpg or .jpeg
Videos	.mp4, .mpeg, or .avi

2. Software will be the version currently published at the time Contract is signed, unless a specific software version is listed in the Supplementary Conditions. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or convert to comply with this Section.
3. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

**PART 2 - PRODUCTS (NOT USED)**

**PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## **01 33 05 CONSTRUCTION PROGRESS SCHEDULE**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. Prepare and submit a Progress Schedule for the Work and update the schedule on a monthly basis for the duration of the Project.
- B. Provide Progress Schedule in adequate detail to allow Owner to monitor progress and to relate submittal processing to sequential activities of the Work.
- C. Incorporate Contract Milestones into the schedule and show activities leading to achievement of these milestones.
- D. Assume complete responsibility for maintaining the progress of the Work per the Progress Schedule submitted.

#### **1.02 DOCUMENTATION**

- A. Submit the schedules to the Construction Manager. Send all documents in digital format for processing.
- B. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided.
- C. Provide schedules, schedule updates and revisions to the Construction Manager in electronic format in its originating software and in Portable Document Format (PDF) as required by Section 01 33 00 "Document Management."
- D. Submit a preliminary Progress Schedule at the pre-construction conference.
- E. Submit a detailed Progress Schedule at least 10 days prior to the first payment request.
- F. Submit Progress Schedule updates monthly within 10 days after submitting Applications for Payment to indicate the progress made on the Project to the closing date for the Application for Payment. Failure to submit Progress Schedules will cause delay in the review and approval of subsequent Applications for Payment.

#### **1.03 PROGRESS SCHEDULE REQUIREMENTS**

- A. Progress Schedule is to be in adequate detail to:
  - 1. Ensure adequate planning, scheduling, and reporting during the execution of the Work;
  - 2. Ensure the coordination of the Work of the Contractor and the various Subcontractors and Suppliers;
  - 3. Monitor the progress of the Work; and
  - 4. Evaluate the impact of proposed changes to the Contract Times and Project Schedule.
- B. Prepare the Progress Schedule using acceptable scheduling software.

- C. Provide the Progress Schedule in the form of a computer-generated critical path schedule which includes Work to be performed on the Project. It is intended that the Progress Schedule accomplish the following:
  - 1. Give early warning of delays in time for correction.
  - 2. Provide detailed plans for the execution of the Work in the form of future activities and events in sequential relationships.
  - 3. Establish relationships of significant planned Work activities and provide a logical sequence for planned Work activities.
  - 4. Provide continuous current status information.
  - 5. Allow analysis of the Contractor's program for the completion of the Project.
  - 6. Permit schedules to be revised when the existing schedule is not achievable.
  - 7. Log the progress of the Work as it actually occurs.
- D. Provide a time-scaled horizontal bar chart which indicates graphically the Work scheduled at any time during the Project. The chart is to indicate:
  - 1. Complete sequence of construction by activity;
  - 2. Identification of the activity by structure, location, and type of Work;
  - 3. Chronological order of the start of each item of Work;
  - 4. The activity start and stop dates;
  - 5. The activity duration; and production rates used to determine the duration;
  - 6. Successor and predecessor relationships for each activity;

#### 1.04 PROGRESS SCHEDULE REVISIONS

- A. Revise the Progress Schedule if it appears that the schedule no longer represents the actual progress of the Work.
  - 1. Submit a Plan of Action for schedule recovery if the Progress Schedule or earned value analysis indicates that the Project is more than 30 days behind schedule. The report is to include:
    - a. Number of days behind schedule;
    - b. Narrative description of the steps to be taken to bring the Project back on schedule; and
    - c. Anticipated time required to bring the Project back on schedule.
  - 2. Submit a revised Progress Schedule indicating the action that the Contractor proposes to take to bring the Project back on schedule.
- B. Revise the Progress Schedule to indicate any adjustments in Contract Times approved by a Modification.
  - 1. Include a revised Progress Schedule with Change Proposals if a change in Contract Times is requested.

2. Construction Manager will deem any Change Proposal that does not have a revised Progress Schedule and request for a change in Contract Times as having no impact on the ability of the Contractor to complete the Project within the Contract Times.
- C. Updating the Progress Schedule to reflect actual progress is not considered a revision to the schedule.
- D. Applications for Payment will not be recommended for payment without a revised Progress Schedule and if required, the report indicating the Contractor's plan for bringing the Project back on schedule.

#### 1.05 FLOAT TIME

- A. Define float time as the amount of time between the earliest start date and the latest start date of a chain of activities on the construction schedule.
- B. Float time is not for the exclusive use or benefit of either the Contractor or Owner.
- C. Where several subsystems each have a critical path, the subsystem with the longest time of completion is the critical path and float time is to be assigned to other subsystems.
- D. Schedule completion date must be the same as the Contract completion date. Time between the end of construction and the Contract completion date is float time.

#### 1.06 MODIFICATION OF CONTRACT TIMES

- A. Contract Times cannot be changed by the submission of a Progress Schedule. Contract Times can only be modified by a Change Order or Contract Amendment.
- B. Submit a Change Proposal for any proposed change in Contract Times, and include justification for the change in accordance with the provisions of the Contract Documents.

#### 1.07 NEAR-TERM LOOK AHEAD SCHEDULES

- A. Provide a near-term look-ahead schedule (NTLA Schedule) every 30 days, typically at periodic coordination meetings, using the form provided by the Construction Manager which shows the days of planned activity for the following:
  1. Submittals to be provided and day of anticipated return;
  2. Equipment and material deliveries;
  3. Arrival and departure of key construction equipment; and
  4. Activities for the Contractor and each Subcontractor.
- B. Coordinate NTLA Schedule with Project Schedule. Submit a report with each NTLA Schedule identifying deviations from the Project Schedule.
- C. Submit a report of near-term work planned in the previous NTLA Schedule that was delayed or not executed by marking actual activity on the previous near term look ahead schedule. Provide explanation of why planned work was not executed and plan to execute in the future and regain time lost.

**PART 2 - PRODUCTS (NOT USED)**

**PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## **01 33 06 GRAPHIC DOCUMENTATION**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. Provide video recordings of the Site.
  - 1. Record the condition of all existing facilities in or abutting the construction area (right-of-way) including streets, curb and gutter, utilities, driveways, fencing, landscaping, etc., prior the beginning of construction. Provide one copy of the dated and labeled recording to the Construction Manager before the start of construction. Provide additional recording as directed by the Construction Manager if the recording provided is not considered suitable for the purpose of recording pre-existing conditions.
  - 2. Provide a video recording of the Site after the Project is complete and all construction trailers, excess materials, trash, and debris have been removed. Provide a 360-degree view of the Project from a consistent height and angle.
  - 3. Format must allow photographic still shots to be extracted from the video recording.
- B. All video recordings are to become the property of the Owner. Photographs or recordings may not be used for public or private publication or display without the written consent of the Owner.
- C. Unmanned Aerial Vehicles used for aerial photography must be registered and piloted by licensed individuals in accordance with Laws and Regulations.

#### **1.02 DOCUMENTATION**

- A. Submit photographic documentation in accordance with Section 01 33 00 "Document Management."

#### **1.03 QUALITY ASSURANCE**

- A. Provide clear video recordings taken with proper exposure. View video recordings in the field and take new video recordings immediately if video quality is not adequate.

### **PART 2 - PRODUCTS**

#### **2.01 VIDEO RECORDING**

- A. Provide video recordings in digital format (thumb drive) that can be played with Windows Media Player in full screen mode without loss of resolution.
- B. Identify Project on video by audio or visual means.
- C. Provide video with file size that does not exceed 1 GB.
- D. Provide video resolution of at least 1080p.
- E. The quality of the video must be adequate to determine the existing conditions of the construction area. Camera panning must be performed while at rest; do not pan the

camera while walking or driving. Camera pans should be performed at intervals to clearly view the entire construction area.

- F. Construction stationing is to be annotated in the video.
- G. The entire construction area recording must be submitted at once. Sections submitted separately will not be accepted.
- H. Site components must be video recorded in an organized sequential order with major components identified.

**PART 3 - EXECUTION (NOT USED)**

**END OF SECTION**

## **01 40 00      QUALITY MANAGEMENT**

### **PART 1 - GENERAL**

#### **1.01    OVERVIEW**

- A. Quality management refers to the overall process of delivering a completed Project to the Owner that complies with the requirements of the Contract Documents. Quality management applies to documentation, products, services, and the Work.
- B. Contractor is responsible for the quality of documentation, products, services, and the Work provided.
  - 1. Contractor is to integrate quality control procedures into the execution of the Work that are adequate to produce a Project that meets the requirements of the Contract Documents, while minimizing loss of time and increased costs. Contractor is solely responsible for time and cost impacts of correcting Defective Work.
  - 2. Contractor is to provide all testing and inspection required to control the quality of the Work in progress to determine that completed Work will comply with the requirements of the Contract Documents.
  - 3. Contractor is to provide verification or acceptance testing as required by the Contract Documents to demonstrate that the completed Work complies with the requirements of the Contract Documents, except for those test that the Owner has determined are to be conducted independent of the Contractor and identified as Owner testing in the Owner's Quality Management Plan.

#### **1.02    STANDARDS**

- A. Provide testing laboratories that comply with the American Council of Independent Laboratories (ACIL) "Recommended Requirements for Independent Laboratory Qualifications."
- B. Perform testing in accordance with the published standards and procedures for testing listed in the Specifications and applicable Laws and Regulations.

#### **1.03    DOCUMENTATION**

- A. Provide documentation which includes:
  - 1. Contractor's Quality Management Plan that establishes the methods of ensuring compliance with the Contract Documents. Submit this plan as Product Data per Section 01 31 13 "Project Administration."
  - 2. A statement of qualifications for any proposed testing laboratory that includes a list of the engineers and technical staff that will provide testing services on the Project, descriptions of the qualifications of these individuals, list of tests that can be performed, equipment used with date of last certification, and a list of recent projects for which testing has been performed with references for those projects.
  - 3. Certified Test Reports for products to be incorporated into the Project. Provide reports to indicate that the proposed products comply with the Contract Documents or indicate that the proposed products do not comply with the Contract Documents and

why those products do not comply. Submit Certified Test Reports as part of a Shop Drawing submitted per Section 01 33 02 "Shop Drawings."

4. Certified Test Reports for inspections and testing required in this Section and in other Sections of the Specifications. Provide reports to indicate that the Work complies with the Contract Documents or indicate that the Work does not comply with the Contract Documents and why the Work does not comply. Submit these test reports on forms provided by the Construction Manager per Section 01 33 00 "Document Management."
5. Certified Test Reports of Defective Work and Certified Test Reports documenting that successful corrective action has produced Work that complies with the Contract Documents. Maintain a register listing Defective Work and record when corrective action has produced Work that complies with the Contract Documents. Present this Defective Work register as part of the Quality Report at progress meetings as described in Paragraph [1.05.E]. Incorporate this register in the closeout documentation per Section 01 70 00 "Execution and Closeout Requirements" to demonstrate that all Defective Work has been corrected.

#### 1.04 OWNER'S QUALITY MANAGEMENT ACTIVITIES

- A. Owner may perform its own verification testing independent of the Contractor. The Owner's Quality Management Plan describes the Owner's anticipated verification testing program for this Project. This plan outlines the anticipated testing in general terms and may not reflect the actual testing performed by the Owner. Actual testing will depend on the Contractor's means, methods, and procedures of construction which will not be known until the Contractor submits the Contractor's Quality Control Plan (CQCP) to the Construction Manager. There is no guarantee that all testing in the preliminary OQMP included in the Bidding/Proposal Documents will be performed by the Owner. Contractor will arrange and pay for all production control testing deemed necessary by the Contractor to produce quality results.
- B. Quality management activities of the Owner are for verifying the results of the Contractor's Work complies with the requirements of the Contract Documents. Performance or non-performance of verification activities by the Owner:
  1. Does not relieve the Contractor of its responsibility to provide Work and furnish products that comply with the requirements of the Contract Documents;
  2. Does not relieve the Contractor of its responsibility to provide adequate quality control measures to produce quality documents, products, services, or Work;
  3. Does not relieve the Contractor of its responsibility for damage to or loss of Work or products before Owner's acceptance; and
  4. Does not affect the continuing rights of the Owner after acceptance of the completed Work.
- C. The Work is subject to observations or testing at any time by the OPT. Products which have been tested or inspected and accepted by the Owner at a supply source or staging area may be inspected or tested again by the OPT before, during, or after incorporation into the Work and rejected if products do not comply with the Contract Documents.

- D. Verification testing performed by the OPT will be paid for by the Owner, except for testing related to Defective Work as discussed in Paragraph **[3.03]**.

#### 1.05 CONTRACTOR'S RESPONSIBILITIES

- A. Review the OQMP and provide a Contractor's Quality Control Plan (CQCP) outlining testing to be provided by the Contractor per Paragraph **[1.07]**.
- B. Implement the CQCP to provide Work that complies with the requirements of the Contract Documents.
  - 1. Provide quality documents meeting the requirements of the Contract Documents.
  - 2. Provide services meeting the requirements of the Contract Documents.
  - 3. Provide the services of a Construction Materials Inspection and Testing (CMIT) provider meeting the requirements of this Section to provide testing required by the Contract Documents to demonstrate that products proposed for the Project in Shop Drawings and Product Data fully comply with the Contract Documents.
  - 4. Inspect and test products to be incorporated into the Project to identify defects before installing them. Do not install Defective products. Conspicuously mark Defective products and remove from the Site. If products are installed before the defect is recognized, remove the Defective products, mark them as Defective and remove them from the Site when the defect is recognized.
  - 5. Integrate production quality control measures into construction activities to produce Work meeting the requirements of the Contract Documents. Inspect self-performed Work and the Work of Subcontractors and Suppliers to identify defects. Correct or replace Defective Work.
  - 6. Provide facilities, equipment, and Samples required for inspections and tests.
    - a. Give the Construction Manager adequate notice before proceeding with Work that would interfere with inspections or testing.
    - b. Notify the Construction Manager and CMIT provider prior to the time that testing is required, providing adequate lead time to allow arrangements for inspections or testing to be performed.
    - c. Do not proceed with Work that would impact the ability to correct defects, or with Work that would require that it be removed to correct defects, until testing is complete, and test results indicate that the corrected Work is acceptable.
    - d. Provide safe access for all CMIT activities, including those to be conducted as part of the Owner's Quality Management Program.
    - e. Cooperate fully with the performance of sampling, inspection, and testing. Provide personnel to assist with sampling or to assist in making inspections and field tests.
    - f. Provide Samples and products in adequate quantities for testing at the Site or at the production source of the product for testing.
    - g. Provide facilities required to store and cure test Samples.

- h. Provide calibrated scales and measuring devices for OPT's use in performing inspections and testing.
  - i. Provide adequate lighting to allow OPT observations.
  - j. Make Contract Documents available to testing agencies when requested.
- C. Perform tests as indicated in Contract Documents. All verification testing is to be observed by the Construction Manager or its designated representative.
  - D. Submit test reports to the Construction Manager.
  - E. Provide an update on quality control activities performed the previous month and planned for the coming month at monthly progress meetings required by Section 01 31 13 "Project Administration."
  - F. Determine testing or inspections required to implement the CQCP. Include costs for additional testing and inspections required to meet the Contractor's quality control obligations in the Contract Price.

#### 1.06 CONTRACTOR'S QUALITY CONTROL MANAGER

- A. Provide a Quality Control Manager for the Project. Quality Control Manager must have authority to reject Defective Work, redirect the efforts of the Contractor, Subcontractor and Suppliers to correct Defective Work, and implement steps to prevent future Defective Work.
- B. The resident superintendent or an approved assistant can serve as Quality Control Manager, provided other duties will allow adequate time to serve in this capacity.

#### 1.07 CONTRACTOR'S QUALITY CONTROL PLAN

- A. Provide a CQCP that describes testing and inspections for Work performed at the Site and at remote locations. Include Work by Subcontractors and Suppliers. The CQCP is to include:
  - 1. A description of the quality control organization, including an organization chart showing lines of authority to control the quality of Work.
  - 2. Documentation describing name, qualifications (in resume format), duties, responsibilities, and level of authority of the Quality Control Manager.
  - 3. The name, qualifications (in resume format), duties, responsibilities, and authorities of other persons assigned a quality control function.
  - 4. Procedures for scheduling, reviewing, certifying, and managing documentation including documentation provided by Subcontractors and Suppliers.
  - 5. Control, verification, and acceptance testing procedures for each specific test. Include:
    - a. Name of tests to be performed;
    - b. Specification paragraph requiring test;
    - c. Parameters of Work to be tested;
    - d. Test frequency;
    - e. Persons responsible for each test; and

- f. Applicable industry testing standards and laboratory facilities to be used for the test.
- 6. Incorporate the testing specified in the OQMP into the CQCP, specifically identifying the tests or inspections that will be provided by the OQMP;
- 7. Procedures for tracking and documenting quality management efforts per Paragraph **[1.03]**.
- 8. Reporting procedures which incorporate the use of forms provided by the Construction Manager.
- 9. The name of the proposed testing laboratories along with documentation of qualifications per Paragraph **[1.03]**.
- B. Use the Contractor's Quality Control Plan Checklist provided by the Construction Manager to review the CQCP before submitting and include a copy of the completed checklist with the CQCP. Do not begin Work until the CQCP is accepted. Submit an interim plan covering only the portion of Work to be performed if the Contractor plans to begin Work prior to submitting the complete CQCP for the Project. Do not begin Work on other parts of the Project until the complete CQCP is accepted.
- C. Meet with the OPT 7 days after CQCP is submitted and before start of construction to discuss the CQCP.
- D. Notify the Construction Manager of any changes to the CQCP or quality control personnel.

#### 1.08 CONTRACTOR'S USE OF OWNER'S TEST REPORTS

- A. Contractor will receive copies of all test reports documenting the Owner's verification tests. Contractor is entitled to rely on the accuracy of these tests results and use these as part of its quality control efforts.
- B. Contractor may submit a Change Proposal if the Owner's testing program deviates significantly from the OQMP. Contractor must demonstrate that actual testing and inspection costs were incurred implementing the CQCP as a result of Owner's decision to not provide testing described in the OQMP.

#### 1.09 LIMITATION OF AUTHORITY OF THE TESTING LABORATORY

- A. The testing laboratory representatives are limited to providing testing services and interpreting the results of the test performed.
- B. The testing laboratory is not authorized to:
  - 1. Alter the requirements of the Contract Documents;
  - 2. Accept or reject any portion of the Work;
  - 3. Perform any of the duties of the Contractor; or
  - 4. Direct or stop the Work.

#### 1.10 TEST REPORTS

- A. Certified Test Reports are to be prepared for all tests.

1. Tests performed by testing laboratories may be submitted on their standard test report forms if acceptable to the Owner using the process directed by the Construction Manager. These reports must include the following:
    - a. Name of the Owner, Project title and number, and name of the Contractor;
    - b. Name, address, and telephone number of the laboratory;
    - c. Name and signature of the laboratory personnel performing the test;
    - d. Description of the product being sampled or tested;
    - e. Date and time of sampling, inspection, and testing;
    - f. Date the report was issued;
    - g. Description of the test performed;
    - h. Weather conditions and temperature at time of test or sampling;
    - i. Location at the Site or structure where the test was taken;
    - j. Standard or test procedure used in making the test;
    - k. A description of the results of the test;
    - l. Statement of compliance or non-compliance with the Contract Documents; and
    - m. Interpretations of test results, if appropriate.
  2. Submit reports on tests performed by the Contractor, Subcontractors, or Suppliers as directed by the Construction Manager.
  3. OPT will prepare test reports on tests performed by the OPT.
- B. Submit test reports as directed by the Construction Manager within 24 hours of completing the test. Flag tests reports with results that do not comply with Contract Documents for immediate attention. Notify the Construction Manager, using acceptable means other than the test report, immediately of any test that fails to comply with the Contract Documents.

#### 1.11 DELIVERY, STORAGE, AND HANDLING

- A. Handle and protect test specimens of products and construction materials at the Site in accordance with recognized test procedures. Provide facilities for storing, curing, and processing test specimens as required by test standards to maintain the integrity of Samples. Transport test specimens in a manner to prevent damage to specimens while in transit.

### **PART 2 - PRODUCTS**

#### 2.01 TESTING APPARATUS

- A. Furnish testing apparatus and related accessories necessary to perform the tests.

#### 2.02 SAMPLE PRODUCTS

- A. Provide Samples of products in adequate quantity for testing.

## **PART 3 - EXECUTION**

### **4.01 IMPLEMENTING CONTRACTOR'S QUALITY CONTROL PLAN**

- A. Perform quality control observations and testing as required in each Section of the Specifications and where indicated on the Drawings.
- B. Include the phases listed below for each definable work task. A definable work task is one which is separate and distinct from other tasks, has separate control requirements, may be provided by different trades or disciplines, or may be work by the same trade in a different environment.
  - 1. Planning Phase: Perform the following before beginning each definable work task:
    - a. Review the Contract Documents.
    - b. Review documents the Contractor will submit and determine that they are complete in accordance with the Contract Documents.
    - c. Check to ensure that all materials and/or equipment have been tested, submitted, and approved.
    - d. Examine the work area to ensure that all required preliminary Work has been completed and complies with the Contract Documents.
    - e. Examine required materials, equipment, and sample Work to ensure that they are on hand, conform to Contract Documents, Shop Drawings and Product Data, and are properly stored.
    - f. Review requirements for quality control inspection and testing.
    - g. Discuss procedures for controlling quality of the Work. Document construction tolerances and workmanship standards for the work task.
    - h. Check that the portion of the plan for the Work to be performed incorporates document review comments.
    - i. Discuss results of planning phase with the Construction Manager. Conduct a meeting attended by the Construction Manager, Quality Control Manager, superintendent, other quality control personnel as applicable, and the foreman responsible for the work task. Instruct applicable workers as to the acceptable level of workmanship required to meet the requirements of the Contract Documents. Document the results of the planning phase actions by separate meeting minutes prepared by the Quality Control Manager and attached to the quality control report.
    - j. Do not move to the next phase unless results of investigations required for the planning phase indicate that requirements have been met.
  - 2. Work Phase: Complete this phase after the planning phase.
    - a. Notify the Construction Manager at least 1 week in advance of beginning the Work and discuss the review of the planning phase effort to indicate that requirements have been met.

- b. Check the Work to ensure that it is in full compliance with the Contract Documents.
  - c. Verify adequacy of controls to ensure full compliance with the Contract Documents. Verify required control inspection and testing is performed.
  - d. Verify that established levels of workmanship meet acceptable workmanship standards. Compare with required Sample panels as appropriate.
  - e. Repeat the work phase for each new crew to work on-site, or any time acceptable specified quality standards are not being met.
3. Follow-Up Phase: Perform daily checks to ensure control activities, including control testing, are providing continued compliance with contract requirements.
- a. Make checks daily and record observations in the quality control documentation.
  - b. Conduct follow-up checks and correct all defects prior to the start of additional work tasks that may be affected by the Defective Work. Do not build upon nor conceal Defective Work.
  - c. Conduct a review of the Work at least 1 month prior to the expiration of the correction period prescribed in the General Conditions with the OPT. Correct defects as noted during the review.
- C. Conduct additional planning and work phases if:
- 1. The quality of on-going Work is unacceptable;
  - 2. Changes are made in applicable quality control staff, on-site production supervision, or crews;
  - 3. Work on a task is resumed after a substantial period of inactivity; or
  - 4. Other quality problems develop.

#### 4.02 DEFECTIVE WORK

- A. Immediately correct any Defective Work or notify the Construction Manager why the Work is not to be corrected immediately and when corrective action will be completed.
- B. Work performed that is connected or adjacent to Defective Work or Work that would have to be removed to correct Defective Work is also considered to be Defective. Contractor is responsible for all costs associated with replacing any acceptable Work that must be removed, or might be damaged by corrective actions.
- C. Document Defective Work, corrective actions taken to correct defects, and that corrected Work complies with the Contract Documents.
- D. Implement countermeasures to prevent future Defective Work.
- E. No payment will be made for Defective Work. Remove Work from the Application for Payment if Work paid for on a previous Application for Payment is found to be Defective.
- F. Owner will withhold payment for Defective Work or Work that has not been tested or inspected in accordance with the CQCP, OQCP, or the Contract Documents.

4.03 VERIFICATION TESTING FOR CORRECTED DEFECTS

- A. Provide verification testing on corrected Work when corrective action is complete to demonstrate that the corrected Work complies with the Contract Documents. Conduct the same tests or inspections used to determine that the original Work was Defective. Different tests or methods may be used if approved by the Owner. Document that Defective Work has been corrected with the Construction Manager.
- B. Pay for verification testing until Work meets quality requirement set forth in the Contract Documents. OPT may perform verification testing as part of the Owner's Quality Management Program and impose a set-off to recover the cost for this testing.

4.04 OWNER'S PRELIMINARY QUALITY CONTROL PLAN : NOT USED

**END OF SECTION**

## **01 57 00      TEMPORARY CONTROLS**

### **PART 1 - GENERAL**

#### **1.01      SUMMARY**

- A. Provide labor, materials, equipment, and incidentals necessary to construct temporary facilities to provide and maintain control over environmental conditions at the Site. Remove temporary facilities when no longer needed.
- B. Construct temporary impounding works, channels, diversions, furnishing, and operation of pumps, installing piping and fittings, and other construction for control of conditions at the Site. Remove temporary controls at the end of the Project.

#### **1.02      DOCUMENTATION**

- A. Provide Shop Drawings in accordance with Section 01 33 02 "Shop Drawings."
- B. Provide copies of notices, records, and reports required by the Contract Documents or Laws and Regulations as Product Data in accordance with Section 01 31 13 "Project Administration."

#### **1.03      QUALITY ASSURANCE**

- A. Construct and maintain temporary controls with adequate workmanship using durable materials to provide effective environmental management systems meeting the requirements of the Contract Documents and Laws and Regulations. Use materials that require minimal maintenance to prevent disruption of construction activities while providing adequate protection of the environment.
- B. Periodically inspect systems to determine that they are meeting the requirements of the Contract Documents.

#### **1.04      POLLUTION CONTROL**

- A. Prevent the contamination of soil, water, or atmosphere by the discharge of noxious substances from construction operations. Provide adequate measures to prevent the creation of noxious air-borne pollutants. Prevent dispersal of pollutants into the atmosphere. Do not dump or otherwise discharge noxious or harmful fluids into drains or sewers, nor allow noxious liquids to contaminate public waterways in any manner.
- B. Provide equipment and personnel and perform emergency measures necessary to contain any spillage.
  - 1. Contain chemicals in protective areas and do not dump on soil. Dispose of such materials at off-site locations in an acceptable manner.
  - 2. Excavate contaminated soil and dispose at an off-site location if contamination of the soil does occur. Fill resulting excavations with suitable backfill and compact to the density of the surrounding undisturbed soil.
  - 3. Provide documentation to the Owner which states the nature and strength of the contaminant, method of disposal, and the location of the disposal site.

4. Comply with Laws and Regulations regarding the disposal of pollutants.
- C. Groundwater or run-off water which has come into contact with noxious chemicals, sludge, or contaminated soil is considered contaminated. Do not allow contaminated water to enter streams or water courses, leave the Site in a non-contained form, or enter non-contaminated areas of the Site.
1. Construct temporary holding ponds or take other precautions and measures as required to contain the contaminated water and pump to a designated storage area.
  2. Wash any equipment used for handling contaminated water or soil within contaminated areas three times with uncontaminated water prior to using such equipment in an uncontaminated area. Dispose of wash water used to wash such equipment as contaminated water.

#### 1.05 TEMPORARY STORMWATER POLLUTION CONTROL

- A. Provide temporary stormwater pollution control per Section 01 57 23 "Temporary Stormwater Pollution Control."

#### 1.06 MANAGEMENT OF WATER

- A. Manage water resulting from rains or ground water at the Site. Maintain trenches and excavations free of water at all times.
- B. Lower the water table in the construction area by acceptable means if necessary to maintain a dry and workable condition at all times. Provide drains, sumps, casings, well points, and other water control devices as necessary to remove excess water.
- C. Provide continuous operation of water management actions. Maintain standby equipment to provide proper and continuous operation for water management.
- D. Ensure that water drainage does not damage adjacent property. Divert water into the same natural watercourse in which its headwaters are located, or other natural stream or waterway as approved by the Owner. Assume responsibility for the discharge of water from the Site.
- E. Remove the temporary construction and restore the Site in a manner acceptable to the Construction Manager and to match surrounding material at the conclusion of the Work.

### **PART 2 - PRODUCTS**

#### 2.01 MATERIALS

- A. Provide materials that comply with Laws and Regulations.

### **PART 3 - EXECUTION**

#### 3.01 CONSTRUCTING, MAINTAINING, AND REMOVING TEMPORARY CONTROLS

- A. Construct temporary controls in accordance with Laws and Regulations.
- B. Maintain controls in accordance with regulatory requirements where applicable or in accordance with the requirements of the Contract Documents.

- C. Remove temporary control when no longer required, but before the Project is complete. Correct any damage or pollution that occurs as the result of removing controls while they are still required.

**END OF SECTION**

## **01 60 00      PRODUCT REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.01      SUMMARY**

- A. Provide products for this Project that comply with the requirements of this Section. Specific requirements of the detailed equipment specifications govern in the case of a conflict with the requirements of this Section.
- B. Comply with applicable specifications and standards.

#### **1.02      DOCUMENTATION**

- A. Provide documents in accordance with the Contract Documents.

#### **1.03      QUALITY ASSURANCE**

- A. Design Criteria:
  - 1. Provide products designed for structural stability and operational capability.
  - 2. Provide members designed to withstand all loads imposed by installation, erection, and operation of the product without deformation, failure, or adversely affecting the operational requirements of the product. Size and strength of materials for structural members are specified as minimums only.
  - 3. Design mechanical and electrical components for all loads, currents, stresses, and wear imposed by startup and normal operations of the equipment without deformation, failure, or adversely affecting the operation of the unit. Mechanical and electrical components specified for equipment are specified as the minimum acceptable for the equipment.
- B. Adapting Substitute Products:
  - 1. The Drawings and Specifications are prepared for the specified products. Make modifications to incorporate the products into the Project if a substitution is requested for a product is and approved in accordance with Section 01 26 00 "Change Management."
  - 2. Do not provide a product with a physical size that exceeds the available space. Consideration may be given to the acceptance of these products or equipment if the Contractor assumes all costs necessary to incorporate the item and the OPT approves such revisions.
  - 3. Coordinate electrical requirements for the products to be installed in the Project, including revisions in electrical equipment components wiring and other elements necessary to incorporate the component.

#### **1.04      STANDARDS**

- A. The applicable industry standards referenced in the Specifications apply as if written here in their entirety.

- B. Provide equipment manufactured using structural and miscellaneous fabricated steel conforming to the standards of the American Institute of Steel Construction, except where indicated otherwise.

#### 1.05 WARRANTIES AND GUARANTEES

- A. Normal warranty provisions are as stated in the General Conditions and Section 01 78 36 "Warranties and Service Agreements."
- B. Correct Defective Work under the provisions of the General Conditions.
- C. Provide warranties and guarantees for periods as defined in the Contract Documents. Individual Sections of the Specifications may have more stringent warranty requirements than stated in the General Conditions. The most stringent warranty will apply in the event of conflicts within the Contract Documents.
- D. The Contract Documents may require special warranties that guarantee performance at a specified capacity, power consumption, efficiency, or other operating parameter. Correct defects that prevent products from meeting the specified performance parameters. The requirements of the special warranty that guarantee performance will be satisfied when the specified performance parameters have been met for a period of 1 calendar year of operation, unless Owner elects to accept Defective Work under the provisions of the General Conditions.
- E. The Contract Documents may require special warranties for periods extending beyond the one-year correction period specified in the General Conditions. The full warranty provisions and requirements for correction of Defective Work stated in the General Conditions apply throughout the extended warranty period.
- F. Provide a warranty bond to provide the same protection as the Contractor's performance bond for extended special warranties. The warranty bond will become effective on the day the performance bond expires which is 1 year after the date of final payment per the General Conditions. The warranty bond will remain in effect until the extended warranty period has expired.
- G. In the event that products are repaired, modified, or replaced under the warranty bond, then the warranty period will continue on the date of completion of these repairs for a period of 6 months or until the end of the original warranty period, whichever is later. In no event will the warranty period extend more than 6 months beyond the end of the original warranty period.

## **PART 2 - PRODUCTS**

### 2.01 MATERIALS

- A. Provide products according to normally accepted engineering and shop practices, except where a higher standard of quality is required by the Contract Documents.
- B. Manufacture like parts of duplicate units to standard sizes and gages that are interchangeable.
- C. Two or more items of the same kind are to be identical and made by the same Supplier.
- D. Provide products suitable for the intended service.

- E. Adhere to the equipment capacities, sizes, and dimensions indicated in the Contract Documents.
- F. Do not use products for any purpose other than that for which they were designed.
- G. Provide new products. Do not provide equipment that has been in service at any time prior to delivery except for testing in accordance with the Contract Documents.
- H. Provide materials suitable for service conditions.

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## 01 70 00 EXECUTION AND CLOSEOUT REQUIREMENTS

### PART 1 - GENERAL

#### 1.01 SUMMARY

- A. Comply with requirements of the General Conditions and specified administrative procedures in closing out the Contract.

#### 1.02 DOCUMENTATION

- A. Submit affidavits and releases on forms provided by the Construction Manager **through the PMIS**.

#### 1.03 SUBSTANTIAL COMPLETION

- A. The following requirements must be met for the Project or a designated portion of the Work to be Substantially Complete per the General Conditions:
  - 1. Work must be fully functional and able to operate in accordance with the Contract Documents without special or extraordinary efforts on the part of the Owner.
  - 2. The following items may remain incomplete in accordance with the Contract Documents:
    - a. **None.**
- B. Conduct inspections with superintendent, Subcontractors, and Suppliers for the Work or a designated portion of the Work prior to calling for a Substantial Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the Project to qualify for Substantial Completion. Review the list with the Construction Manager or the designated member of the OPT. The Construction Manager or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor's responsibility to create and manage this list of deficiencies until corrections are made.
- C. Correct the identified deficiencies prior to calling for a Substantial Completion inspection.
- D. Notify the Construction Manager that the Work or a designated portion of the Work is Substantially Complete per the General Conditions. Include a list of the items remaining to be completed or corrected before the Project will be considered for Final Completion.
- E. OPT will visit the Site to observe the Work within a reasonable time after notification is received to determine the status of the Project.
- F. Construction Manager will notify the Contractor that the Work is either Substantially Complete or that additional Work must be performed before the Project will be considered Substantially Complete.
  - 1. Construction Manager will notify the Contractor of items that must be completed before the Project will be considered Substantially Complete.
  - 2. Correct the noted deficiencies in the Work.
  - 3. Notify the Construction Manager when the items of Work in the Construction Manager's notice have been completed.

4. OPT will revisit the Site and repeat the process.
5. Construction Manager will issue a Certificate of Substantial Completion to the Contractor when the OPT considers the Project to be Substantially Complete. The certificate will include a tentative list of items to be corrected before Final Payment will be recommended.
6. Review the list and notify the Construction Manager of any objections to items on the list within 10 days after receiving the Certificate of Substantial Completion.

#### 1.04 CLOSEOUT REQUIREMENTS

- A. Provide the following before Final Completion:
  1. Record Documents per Section 01 31 13 "Project Administration";
  2. Warranties, bonds, and service agreements;
  3. Shop Drawings, Product Data, operation and maintenance manuals, and other documentation required by the Contract Documents;
  4. Evidence of continuing insurance and bond coverage as required by the Contract Documents; and
  5. Final videos per Section 01 33 06 "Graphic Documentation."

#### 1.05 WARRANTIES, BONDS, AND SERVICES AGREEMENTS

- A. Provide warranties, bonds, and service agreements required by Section 01 33 00 "Document Management" or by the individual Sections of the Specifications.
- B. The date for the start of warranties, bonds, and service agreements is established per the General Conditions.
- C. Compile warranties, bonds, and service agreements and review these documents for compliance with the Contract Documents.
  1. Each document is to be signed by the respective Supplier or Subcontractor.
  2. Each document is to include:
    - a. The product or Work item description;
    - b. The firm name, with the name of the principal, address, and telephone number;
    - c. Scope of warranty, bond, or services agreement;
    - d. Date, duration, and expiration date for each warranty bond and service agreement;
    - e. Procedures to be followed in the event of a failure; and
    - f. Specific instances that might invalidate the warranty or bond.
- D. Submit digital copies of the documents to the Construction Manager for review.
- E. Submit warranties, bonds, and services agreements within 10 days after equipment or components placed in service.

## 1.06 FINAL COMPLETION

- A. Conduct inspections with Superintendent, Subcontractors, and Suppliers prior to calling for a Final Completion inspection by the OPT. Create a list of deficiencies in the Work that must be completed for the Project to qualify for the Final Completion inspection. Review the list with the Construction Manager or the designated member of the OPT. The Construction Manager or the designated member of the OPT may assist the Contractor with this effort; however, it is the Contractor's responsibility to create and manage this list of deficiencies until corrections are made.
- B. Identify, list, and correct deficiencies prior to calling for a Final Completion inspection. The Project at the call for Final Completion represents the Contractor's interpretation of a project completed in conformance with the Contract Documents and reflects the Contractor's representation of a quality project meeting the Owner's expectations.
- C. Notify the Construction Manager when:
  - 1. Work has been completed and complies with the Contract Documents;
  - 2. Work is complete and ready for final inspection;
  - 3. Final documentation for all outstanding Modifications and Claims (other than those listed on the Certificate of Final Completion) have been processed and are ready for incorporation into the final Application for Payment; and
  - 4. Closeout requirements in Paragraph **[1.04]** have been completed.
- D. OPT will visit the Site to determine if the Project is complete and ready for final payment within a reasonable time after the notice is received.
- E. Construction Manager will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.
- F. Take immediate steps to correct Defective Work. Notify the Construction Manager when Defective Work has corrected. OPT will visit the Site to determine if the Project is complete and the Work is acceptable. Construction Manager will issue a Certificate of Final Completion to the Contractor when the Project is complete or will notify the Contractor that Work is Defective.
- G. Submit the request for final payment with closeout documentation described in Paragraph **[1.04]** if notified that the Project is complete and the Work is acceptable.

## 1.07 REINSPECTION FEES

- A. Owner may impose a set-off against the Application for Payment in accordance with the General Conditions to compensate the OPT for additional visits to the Project if additional Work is required.

## **PART 2 - PRODUCTS (NOT USED)**

## **PART 3 - EXECUTION (NOT USED)**

## **END OF SECTION**

## **01 74 23 FINAL CLEANING**

### **PART 1 - GENERAL**

#### **1.01 SUMMARY**

- A. Perform a thorough cleaning of the Site, buildings, or other structures prior to Owner occupancy of the buildings, and prior to Final Completion. Leave the Project clean and ready for occupancy.

#### **1.02 DOCUMENTATION**

- A. Provide data for maintenance per Section 01 33 04 "Operation and Maintenance Data."

#### **1.03 QUALITY CONTROL**

- A. Use experienced workmen or professional cleaners for final cleaning.

### **PART 2 - PRODUCTS**

#### **2.01 MATERIALS**

- A. Furnish the labor and products needed for cleaning and finishing as recommended by the manufacturer of the surface material being cleaned.
- B. Use cleaning products only on the surfaces recommended by the Supplier.
- C. Use only those cleaning products which will not create hazards to health or property and which will not damage surfaces.

### **PART 3 - EXECUTION**

#### **3.01 FINAL CLEANING**

- A. Thoroughly clean the entire Site and make ready for occupancy.
  - 1. Remove construction debris, boxes, and trash from the Site.
  - 2. Restore grade to match surrounding condition and remove excess dirt.
  - 3. Sweep all drives, sidewalks, right-of-way and parking lots clean of dirt and debris. Use water trucks or hose down paved site to like new appearance.
- B. Broom clean exterior paved surfaces and rake clean other surfaces of the grounds.

**END OF SECTION**