

PROJECT MANUAL

Jackson Hole Community Pathways

**Path 22 Middle Section
Phase 2 Project
Cattle Tunnel to Spring Gulch Rd.**

Teton County, Wyoming

OWNER:

**TETON COUNTY, WYOMING
P. O. BOX 3594
JACKSON, WYOMING 83001**

ENGINEER:

**TETON COUNTY ENGINEERING DEPARTMENT
P. O. BOX 3594
JACKSON, WYOMING 83001**

July 6, 2016



**Jackson Hole Community Pathways
Path 22 Middle Section – Phase 2 Project
Teton County, Wyoming**

TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGES</u>
Invitation for Bids	1 Page
Instructions to Bidders	11 Pages
Bid Form	7 Pages
Contract Agreement	6 Pages
General Conditions / Bond Forms	79 Pages
Technical Specifications	21 Pages
Geotechnical Report	16 Pages
Standard Forms	6 Pages
Construction Drawings	65 Sheets

INVITATION FOR BIDS

INVITATION FOR BIDS
PATH 22 – MIDDLE SECTION – PHASE II PATHWAY PROJECT
TETON COUNTY, WYOMING

Invitation for Bids for construction of 0.86 miles of a 10' wide paved multi-use pathway on the south side of WY22. The westerly terminus is the existing cattle tunnel / underpass. The easterly terminus is opposite the intersection of Spring Gulch Road and WY 22. The total length of the Project is approximately 4,600 lineal feet.

Notice is hereby given that Teton County, Wyoming (Owner) will receive sealed bids prior to **3:00 P.M. MDT on Friday, July 22, 2016**, at the Teton County Engineering Office, 320 South King Street commonly known as the Old Library Jackson, Wyoming at which time the bids will be publicly opened and read aloud. The project will generally consist of unclassified excavation above subgrade, construction of a pathway structural section consisting of Contractor supplied pit run, base course, asphalt and other materials, retaining wall construction, fence installation, topsoil placement, seeding, and other miscellaneous items.

The Issuing Office for the Bidding Documents is the Teton County Engineering and Pathways Office, 320 South King Street. Contact Brian Schilling at bschilling@tetonwyo.org or 307.732.8573 for any questions.

Bidding Documents may be obtained online from the Teton County Pathways website at <http://www.tetonwyo.org/pathwy/topics/wy22-middle-segment/253005/>. Printed copies are available for purchase from Stinky Prints, Inc. (www.stinkyprints.com), 260 E. Broadway, Jackson, WY 83001, 307.690.8892. Prospective bidders may also examine the Bidding Documents at the Issuing Office on Monday through Friday between the hours of 9:00 AM to 3:00 PM.

A pre-bid conference will be held at the Teton County Engineering Office on Friday, July 15 at 10:00 AM.

No bids will be opened unless sealed and filed with the Owner and accompanied by a money order, certified check, or bid bond payable to the Owner for 5% of the bid amount (to be forfeited as liquidated damages in the event that the bidder fails to enter promptly into a written agreement contract and furnish the required documents).

The successful bidder shall provide performance and payment bonds for the full amount of the project.

In accordance with Wyoming Statutes, a five percent (5%) bid preference will apply to bids from Wyoming Resident Contractors.

The Owner reserves the right to reject any or all proposals and to waive informalities and irregularities in proposals.

END OF INVITATION Publish: July 6, 13, and 20, 2016

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDERS

PATH 22 MIDDLE SECTION – PHASE II

TABLE OF CONTENTS

	Page
Article 1 – Defined Terms.....	1
Article 2 – Copies of Bidding Documents.....	1
Article 3 – Qualifications of BIDDERS.....	1
Article 4 – Site and Other Areas; Existing Site Conditions; Examination of Site; OWNER’s Safety Program; Other Work at the Site.....	1
Article 5 – Bidder’s Representations.....	3
Article 6 – Pre-Bid Conference.....	4
Article 7 – Interpretations and Addenda	4
Article 8 – Bid Security	5
Article 9 – Contract Times.....	5
Article 10 – Liquidated Damages	5
Article 11 – Substitute and “Or-Equal” Items	5
Article 12 – Subcontractors, Suppliers, and Others.....	6
Article 13 – Preparation of Bid.....	6
Article 14 – Basis of Bid.....	7
Article 15 – Submittal of Bid	7
Article 16 – Modification and Withdrawal of Bid	8
Article 17 – Opening of Bids.....	8
Article 18 – Bids to Remain Subject to Acceptance	8
Article 19 – Evaluation of Bids and Award of Contract.....	8
Article 20 – Bonds and Insurance	9
Article 21 – Signing of Agreement	9
Article 22 – Sales and Use Taxes	9

NOTE

These Instructions to Bidders are amended or supplemented as indicated below:

- A. Deleted language is shown with a ~~strike through~~ of the original words.
- B. New language is indicated by the use of **bold** lettering.
- C. All language not amended or supplemented remain in full force and effect.

ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to BIDDERS have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to BIDDERS have the meanings indicated below:

A. *Issuing Office* – The office from which the Bidding Documents are to be issued.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the advertisement or invitation to bid.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 OWNER and ENGINEER, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within five days of OWNER's request, BIDDER shall submit (a) written evidence establishing its qualifications such as financial data, previous experience, present commitments, and such other data as may be requested by OWNER.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by OWNER for the use of the CONTRACTOR. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by CONTRACTOR.

4.02 *Existing Site Conditions*

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The General Conditions identify:

- a. those reports known to OWNER of explorations and tests of subsurface conditions at or adjacent to the Site.
- b. those drawings known to OWNER of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- c. reports and drawings known to OWNER relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
- d. Technical Data contained in such reports and drawings.

2. OWNER will make copies of reports and drawings referenced above available to any BIDDER on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy BIDDER is entitled to rely, as provided in the General Conditions, has been identified and established in the ~~Supplementary~~ **General** Conditions. BIDDER is responsible for any interpretation or conclusion BIDDER draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the ~~Supplementary~~ **General** Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
4. Geotechnical Baseline Report: The Bidding Documents contain a Geotechnical Baseline Report (GBR). The GBR describes certain select subsurface conditions that are anticipated to be encountered by CONTRACTOR during construction in specified locations (“Baseline Conditions”). The GBR is a Contract Document.

The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, BIDDERS cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.

Nothing in the GBR is intended to relieve BIDDERS of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to OWNER and ENGINEER by OWNER’s of such Underground Facilities, including OWNER, or others.
- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 *Site Visit and Testing by BIDDERS*

- A. BIDDER shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
- B. BIDDER is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

- C. On request, and to the extent OWNER has control over the Site, and schedule permitting, the OWNER will provide BIDDER access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as BIDDER deems necessary for preparing and submitting a successful Bid. OWNER will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on OWNER's authority regarding the Site.
- D. BIDDER shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by OWNER or by property OWNER's or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. BIDDER shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 *OWNER's Safety Program*

- A. Site visits and work at the Site may be governed by an OWNER safety program. As the General Conditions indicate, if an OWNER safety program exists, it will be noted in the ~~Supplementary~~ **General** Conditions.

4.05 *Other Work at the Site*

- A. Reference is made to Article 8 of the ~~Supplementary~~ **General** Conditions for the identification of the general nature of other work of which OWNER is aware (if any) that is to be performed at the Site by OWNER or others (such as utilities and other prime CONTRACTORS) and relates to the Work contemplated by these Bidding Documents. If OWNER is party to a written contract for such other work, then on request, OWNER will provide to each BIDDER access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each BIDDER before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the ~~Supplementary~~ **General** Conditions, especially with respect to Technical Data in such reports and drawings;

- E. consider the information known to BIDDER itself; information commonly known to CONTRACTORS doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, 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 BIDDER; and (3) Bidder's safety precautions and programs;
- F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to BIDDER;
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. agree that the submission of a Bid will constitute an incontrovertible representation by BIDDER that BIDDER has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

- 6.01 A pre-Bid conference will be held at the time and location stated in the invitation or advertisement to bid. Representatives of OWNER and ENGINEER will be present to discuss the Project. BIDDERS are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective BIDDERS of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to OWNER in an amount of five (5) percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.02 The Bid security of the apparent Successful BIDDER will be retained until OWNER awards the contract to such BIDDER, and such BIDDER has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful BIDDER fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may consider BIDDER to be in default, annul the Notice of Award, and the Bid security of that BIDDER will be forfeited. Such forfeiture shall be OWNER's exclusive remedy if BIDDER defaults.
- 8.03 The Bid security of other BIDDERS that OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such BIDDERS will be released.
- 8.04 Bid security of other BIDDERS that OWNER believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which Milestones are to be achieved and the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the CONTRACTOR to request that ENGINEER authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by ENGINEER until after the Effective Date of the Contract.
- 11.02 All prices that BIDDER sets forth in its Bid shall be based on the presumption that the CONTRACTOR will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 A BIDDER shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective BIDDER objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective BIDDER should refrain from submitting a Bid.
- 12.02 Subsequent to the submittal of the Bid, OWNER may not require the Successful BIDDER or CONTRACTOR to retain any Subcontractor, Supplier, or other individual or entity against which CONTRACTOR has reasonable objection.
- 12.03 The apparent Successful BIDDER, and any other BIDDER so requested, shall within five days after Bid opening, submit to OWNER a list of the Subcontractors or Suppliers as may be requested by OWNER. If requested by OWNER, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful BIDDER to submit an acceptable substitute, in which case apparent Successful BIDDER shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and OWNER may consider such price adjustment in evaluating Bids and making the Contract award.
- 12.04 If apparent Successful BIDDER declines to make any such substitution, OWNER may award the Contract to the next lowest BIDDER that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any BIDDER. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and BIDDER elects to not furnish pricing for such optional alternate item, then BIDDER may enter the words "No Bid" or "Not Applicable."
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

- 13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.
- 13.05 A Bid by an individual shall show the Bidder's name and address for receiving notices.
- 13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.
- 13.07 All names shall be printed in ink below the signatures.
- 13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or BIDDER shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state CONTRACTOR license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID

14.01 *Unit Price*

- A. BIDDERS shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which OWNER or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the BIDDER. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by OWNER for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 *Allowances*

- A. The Bid price shall include such amounts as the BIDDER deems proper for CONTRACTOR's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a BIDDER is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 7 of the Bid Form.

- 15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in an opaque sealed envelope with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of BIDDER, and shall be accompanied by the Bid security and other required documents. The sealed envelope containing the Bid can be hand delivered or delivered by other appropriate carrier and be plainly marked on the outside with the notation "BID ENCLOSED." Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the BIDDER unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the BIDDER.
- 16.02 If a BIDDER wishes to modify its Bid prior to Bid opening, BIDDER must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 A Bid may not be withdrawn after Bids are opened.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to BIDDERS after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER will reject the Bid of any BIDDER that OWNER finds, after reasonable inquiry and evaluation, to not be responsible. If BIDDER purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the OWNER will reject the Bid as nonresponsive; provided that OWNER also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- 19.02 If OWNER awards the contract for the Work, such award shall be to the responsible BIDDER submitting the lowest responsive Bid. Owner reserves the right to waive any irregularities or formalities in the proposals.

19.03 Evaluation of Bids

- A. In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- B. For the determination of the apparent low BIDDER when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

19.04 In evaluating whether a BIDDER is responsible, OWNER will consider the qualifications of the BIDDER and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of BIDDERS and any proposed Subcontractors or Suppliers.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the ~~Supplementary~~ **General** Conditions, sets forth OWNER's requirements as to performance and payment bonds and insurance. When the Successful BIDDER delivers the Agreement (executed by Successful BIDDER) to OWNER, it shall be accompanied by required bonds, insurance documentation and other specified items.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When OWNER issues a Notice of Award to the Successful BIDDER, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful BIDDER shall execute and deliver the required number of counterparts of the Agreement (and any bonds, insurance documentation and other specified items required to be delivered by the Contract Documents) to OWNER. Within ten days thereafter, OWNER shall deliver one fully executed counterpart of the Agreement to Successful BIDDER, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 22 – SALES AND USE TAXES

22.01 OWNER is exempt from Wyoming State sales tax on materials and equipment if purchased by OWNER and incorporated in the Work (Exemption No. 24-T-880).

ARTICLE 23 – WYOMING STATE STATUTES

23.01 "Preference shall be given to WY laborers and materials as required by WY Statutes 1977, Section 16-6—104."

23.02 "Preference shall be given to WY Contractors as defined by WY Statutes 1977, Section 16-6-101, in accordance with the provisions of Section 16-6-102. Attention is also called to the provisions of Section 16-6-103 with respect to sub—Contractors by a successful resident bidder."

- 23.03 “Resident Bidders attention is called to WY Statute 16-6-103 regarding limitation of out-of-state subcontracts. Subcontracts in excess of 30% of the bid price may affect the Bidder’s resident status and 5% preference over non—resident bidders per WY Statute 16— 6—102.”
- 23.04 “Attention is called to the provisions of WY Statutes 1977, Section 16-6-121 pertaining to notice of intent to take advantage of liens or bonds.”
- 23.05 “Attention is called to the provisions of WY Statutes, 1971, Section 16—6—201 thru 206 pertaining to Preference for State Laborers.”
- 23.06 Final settlement with, and payment to Contractor shall be in accordance with W.S.S. 16-6-116.

BID FORM

BID FORM

PATH 22 MIDDLE SECTION – PHASE II

TABLE OF CONTENTS

	Page
Article 1 – Bid Recipient	1
Article 2 – Bidder’s Acknowledgements	1
Article 3 – Bidder’s Representations.....	1
Article 4 – Bidder’s Certification	2
Article 5 – Basis of Bid.....	3
Article 6 – Time of Completion	5
Article 7 – Attachments to this Bid	5
Article 8 – Defined Terms.....	5
Article 9 – Bid Submittal.....	5

NOTE

The Bid Form is amended or supplemented as indicated below:

- A. Deleted language is shown with a ~~striketrough~~ of the original words.
- B. New language is indicated by the use of **bold** lettering.
- C. All language not amended or supplemented remain in full force and effect.

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Teton County, WY
320 S. King St.
Jackson, WY 83001

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

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

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the ~~Supplementary~~ **General** Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the ~~Supplementary~~ **General** Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, 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 Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the e execution of the Contract.

ARTICLE 5 – BASIS OF BID

Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

PATH 22 MIDDLE SECTION – PHASE 2 BID SCHEDULE

Item No.	Spec Section	Item Description	Unit	Estimated Quantity	Bid Unit Price	Total Price
1	105.9	Contractor Surveying	LS	1		
2	109	Mobilization	LS	1		
3	109	Force Account	FA	1	\$ 25,000.00	\$ 25,000.00
4	109	Force Account - Utility Adjustments	FA	1	\$ 7,500.00	\$ 7,500.00
5	201	Force Account - Clearing and Grubbing	FA	1	\$ 10,000.00	\$ 10,000.00
6	202	Removal of Existing Asphalt Surfacing	SY	900		
7	203	Unclassified Excavation Above Subgrade	CY	2703		
8	203	Unclassified Excavation Below Subgrade	CY	50		
9	203	Borrow Special Excavation (Imported Borrow)	CY	2500		
10	207	Topsoil Placement	LF	4605		
11	207	Import Topsoil	TON	150		
12	215	Contractor Stormwater Control	LS	1		
13	215	Silt Fence	LF	4550		
14	215	Sediment Logs	LF	4600		
15	216	Hydraulic Seeding	SY	8300		
16	216	Erosion Control Blanket	SY	4000		
17	301	Pit Run Subbase	TON	3975		
18	301	Crushed Base	TON	1750		
19	406	Plant Mix Pavement (Commercial Mix)	TON	740		
20	509	Structural Fill	CY	1000		
21	509	Block Retaining Wall	SF	4825		
22	603	CMP 18 in	FT	60		
23	603	CMP FE Sect 18 in	EA	4		
24	607	Fence Removal	FT	70		
25	607	Fence (Safety Railing)	FT	1150		
26	702	Remove & Reset Highway Signs	EA	5		
27	702	Pathway Signs, including post	EA	6		
28	702	Delineators, Type III	EA	10		
29	703	Temporary Traffic Control	LS	1		
31	703.4	Pavement Markings 4" Centerline	LF	300		
32	703.4	Pavement Markings Crosswalks	SF	200		
33	703.4	Pavement Markings Yield Line	EA	1		

TOTAL BID ITEMS 1 - 33:

Dollars

(use words)

\$

(use figures)

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete on or before October 14, 2016, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 28, 2016.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. List of Project References;

ARTICLE 8 – DEFINED TERMS

~~8.01~~ The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, **and** the General Conditions. ~~and the Supplementary Conditions.~~

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By:

[Signature]

[Printed name]

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature]

[Printed name]

Title:

Submittal Date:

Address for giving notices:

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

Bidder's License No.: _____

CONTRACT AGREEMENT

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between Teton County, WY (“OWNER”) and
_____ (“CONTRACTOR”).

OWNER and CONTRACTOR hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Path 22 Middle Section – Phase II

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Teton County, WY.

3.02 The OWNER has retained the Teton County Engineering Dept. (“ENGINEER”) to act as OWNER’s representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before October 14, 2016 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 28, 2016.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 4.01 above and that OWNER will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, CONTRACTOR shall pay OWNER \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item. Reference the attached Bid Form for further information.
 - B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment ~~on or about the day of~~ **once** each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as OWNER may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, then as

long as the character and progress of the Work remain satisfactory to OWNER and ENGINEER, there will be no additional retainage; and

- b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100 percent of the Work completed, less such amounts set off by OWNER pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of five percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Contract, CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. CONTRACTOR has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. CONTRACTOR has considered the information known to CONTRACTOR itself; information commonly known to CONTRACTORS doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, 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.

- F. Based on the information and observations referred to in the preceding paragraph, 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.
- G. 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.
- H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. CONTRACTOR's entry into this Contract 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.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to [REDACTED], inclusive).
 - 2. Performance bond (pages [REDACTED] to [REDACTED], inclusive).
 - 3. Payment bond (pages [REDACTED] to [REDACTED], inclusive).
 - 4. General Conditions (pages [REDACTED] to [REDACTED], inclusive).
 - 5. Specifications and Geotechnical Report as listed in the table of contents of the Project Manual.
 - 6. Drawings (not attached but incorporated by reference) consisting of [REDACTED] sheets with each sheet bearing the following general title: Path 22 Middle Section – Phase 2.
 - 7. Addenda (numbers [REDACTED] to [REDACTED], inclusive).
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. CONTRACTOR's Bid ([REDACTED] pages)
 - b. Documentation submitted by CONTRACTOR prior to Notice of Award ([REDACTED] pages)
 - c. Insurance Certificate ([REDACTED] pages)
 - d. Workers Compensation Certificate ([REDACTED] pages)
 - e. Schedule of Rates ([REDACTED] pages)
 - f. List of Suppliers and Subcontractors ([REDACTED] pages)
 - g. Projected Construction Schedule ([REDACTED] pages)
 - h. Notice of Award ([REDACTED] pages)
 - i. Notice to Proceed (1 page)

9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Work Change Directives.
 - b. Change Orders.
 - c. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto 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 Documents.

10.03 *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.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall 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.

10.05 *CONTRACTOR's Certifications*

- A. CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of OWNER, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of OWNER, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

This Agreement will be effective on (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If CONTRACTOR is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

GENERAL CONDITIONS

BOND FORMS

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



Endorsed by



NOTE

These Standard Conditions of the Construction Contract are amended or supplemented as indicated below:

- A. Deleted language is shown with a ~~strike through~~ of the original words.
- B. New language is indicated by the use of **bold** lettering.
- C. All language not amended or supplemented remain in full force and effect.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

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(202) 347-7474
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**STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT**

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms	1
1.02 Terminology	5
Article 2 – Preliminary Matters	6
2.01 Delivery of Bonds and Evidence of Insurance	6
2.02 Copies of Documents	6
2.03 Before Starting Construction	7
2.04 Preconstruction Conference; Designation of Authorized Representatives	7
2.05 Initial Acceptance of Schedules	7
2.06 Electronic Transmittals	8
Article 3 – Documents: Intent, Requirements, Reuse	8
3.01 Intent	8
3.02 Reference Standards	9
3.03 Reporting and Resolving Discrepancies	9
3.04 Requirements of the Contract Documents	10
3.05 Reuse of Documents	10
Article 4 – Commencement and Progress of the Work	11
4.01 Commencement of Contract Times; Notice to Proceed	11
4.02 Starting the Work	11
4.03 Reference Points	11
4.04 Progress Schedule	11
4.05 Delays in CONTRACTOR’s Progress	11
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions	12
5.01 Availability of Lands	12
5.02 Use of Site and Other Areas	13
5.03 Subsurface and Physical Conditions	14

5.04	Differing Subsurface or Physical Conditions	14
5.05	Underground Facilities	16
5.06	Hazardous Environmental Conditions at Site	17
Article 6 – Bonds and Insurance		19
6.01	Performance, Payment, and Other Bonds	19
6.02	Insurance—General Provisions	20
6.03	CONTRACTOR’s Insurance	21
6.04	OWNER’s Liability Insurance	25
6.05	Property Insurance	25
6.06	Waiver of Rights	27
6.07	Receipt and Application of Property Insurance Proceeds	28
Article 7 – CONTRACTOR’s Responsibilities		28
7.01	Supervision and Superintendence	28
7.02	Labor; Working Hours	29
7.03	Services, Materials, and Equipment.....	29
7.04	“Or Equals”	29
7.05	Substitutes	30
7.06	Concerning Subcontractors, Suppliers, and Others	32
7.07	Patent Fees and Royalties	33
7.08	Permits	34
7.09	Taxes	34
7.10	Laws and Regulations.....	34
7.11	Record Documents.....	35
7.12	Safety and Protection.....	35
7.13	Safety Representative	36
7.14	Hazard Communication Programs	36
7.15	Emergencies	36
7.16	Shop Drawings, Samples, and Other Submittals.....	36
7.17	CONTRACTOR’s General Warranty and Guarantee	39
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	40

Article 8 – Other Work at the Site	41
8.01 Other Work	41
8.02 Coordination	41
8.03 Legal Relationships.....	42
Article 9 – OWNER’s Responsibilities.....	43
9.01 Communications to CONTRACTOR	43
9.02 Replacement of ENGINEER	43
9.03 Furnish Data	43
9.04 Pay When Due.....	43
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance.....	43
9.07 Change Orders.....	43
9.08 Inspections, Tests, and Approvals.....	43
9.09 Limitations on OWNER’s Responsibilities	43
9.10 Undisclosed Hazardous Environmental Condition.....	44
9.11 Evidence of Financial Arrangements.....	44
9.12 Safety Programs	44
Article 10 – ENGINEER’s Status During Construction	44
10.01 OWNER’s Representative.....	44
10.02 Visits to Site.....	44
10.03 Project Representative.....	44
10.04 Rejecting Defective Work.....	45
10.05 Shop Drawings, Change Orders and Payments.....	45
10.06 Determinations for Unit Price Work	45
10.07 Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.08 Limitations on ENGINEER’s Authority and Responsibilities	45
10.09 Compliance with Safety Program.....	46
Article 11 – Amending the Contract Documents; Changes in the Work	46
11.01 Amending and Supplementing Contract Documents	46
11.02 OWNER-Authorized Changes in the Work	47
11.03 Unauthorized Changes in the Work.....	47
11.04 Change of Contract Price	47

11.05	Change of Contract Times	48
11.06	Change Proposals	48
11.07	Execution of Change Orders.....	49
11.08	Notification to Surety.....	50
Article 12 –	Claims.....	50
12.01	Claims	50
Article 13 –	Cost of the Work; Allowances; Unit Price Work.....	51
13.01	Cost of the Work	51
13.02	Allowances	53
13.03	Unit Price Work	54
Article 14 –	Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....	55
14.01	Access to Work.....	55
14.02	Tests, Inspections, and Approvals.....	55
14.03	Defective Work.....	56
14.04	Acceptance of Defective Work.....	56
14.05	Uncovering Work	56
14.06	OWNER May Stop the Work	57
14.07	OWNER May Correct Defective Work.....	57
Article 15 –	Payments to CONTRACTOR; Set-Offs; Completion; Correction Period.....	58
15.01	Progress Payments.....	58
15.02	CONTRACTOR’s Warranty of Title	61
15.03	Substantial Completion.....	61
15.04	Partial Use or Occupancy	62
15.05	Final Inspection	62
15.06	Final Payment.....	63
15.07	Waiver of Claims	64
15.08	Correction Period	64
Article 16 –	Suspension of Work and Termination	65
16.01	OWNER May Suspend Work	65
16.02	OWNER May Terminate for Cause	65
16.03	OWNER May Terminate For Convenience	66
16.04	CONTRACTOR May Stop Work or Terminate	67

Article 17 – Final Resolution of Disputes	67
17.01 Methods and Procedures.....	67
Article 18 – Miscellaneous	67
18.01 Giving Notice	67
18.02 Computation of Times.....	68
18.03 Cumulative Remedies	68
18.04 Limitation of Damages	68
18.05 No Waiver	68
18.06 Survival of Obligations	68
18.07 Controlling Law	68
18.08 Headings.....	68

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

a contractual issue that ENGINEER has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the OWNER and CONTRACTOR concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that OWNER has agreed to pay CONTRACTOR for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which CONTRACTOR shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *CONTRACTOR*—The individual or entity with which OWNER has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *ENGINEER*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by ENGINEER which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to CONTRACTOR issued on or after the Effective Date of the Contract, signed by OWNER and recommended by ENGINEER, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

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

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of CONTRACTOR with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then CONTRACTOR shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

- A. OWNER shall furnish to CONTRACTOR four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

- B. OWNER shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by ENGINEER and other design professionals. OWNER shall make such original printed record version of the Contract available to CONTRACTOR for review. OWNER may delegate the responsibilities under this provision to ENGINEER.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), CONTRACTOR shall submit to ENGINEER for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; ~~and~~
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
 - 4. **the name and phone number of the designated responsible person to be contacted at any hour in the event of a critical condition requiring immediate attention;**
 - 5. **the name and phone number of CONTRACTOR's on-site "Competent Person", as defined by OSHA 1962.650(b), responsible for safety issues related to CONTRACTOR's means and methods of constructing the Work;**
 - 6. **a list of hourly labor and equipment rental rates for all CONTRACTOR's forces and also for its Subcontractors. These rates shall be utilized for Change Orders as described in Article 11. These rates shall be used for any Force Account work (if aggregable to OWNER and CONTRACTOR) and include CONTRACTOR's fees for overhead and profit; and**
 - 7. **a preliminary schedule of materials and equipment procurement.**

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by CONTRACTOR, ENGINEER, and others as appropriate, will be held to review for

acceptability to ENGINEER as provided below the schedules submitted in accordance with Paragraph 2.03.A. CONTRACTOR shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The Progress Schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.
2. CONTRACTOR's Schedule of Submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.
3. CONTRACTOR's Schedule of Values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *CONTRACTOR's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, CONTRACTOR shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy that CONTRACTOR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by ENGINEER, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *CONTRACTOR's Review of Contract Documents:* If, before or during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then CONTRACTOR shall promptly report it to ENGINEER in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by ENGINEER, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, CONTRACTOR and OWNER shall submit to the ENGINEER all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. ENGINEER will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. ENGINEER will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. ENGINEER's written clarification, interpretation, or decision will be final and binding on CONTRACTOR, unless it appeals by submitting a Change Proposal, and on OWNER, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then ENGINEER will promptly give written notice to OWNER and CONTRACTOR that ENGINEER is unable to provide a decision or interpretation. If OWNER and CONTRACTOR are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

4.05 *Delays in CONTRACTOR's Progress*

- A. If OWNER, ENGINEER, or anyone for whom OWNER is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then CONTRACTOR shall be entitled to an equitable adjustment in the Contract Times and Contract Price. CONTRACTOR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR's ability to complete the Work within the Contract Times.

- B. CONTRACTOR shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of CONTRACTOR. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of CONTRACTOR.
- C. If CONTRACTOR's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of OWNER, CONTRACTOR, and those for which they are responsible, then CONTRACTOR shall be entitled to an equitable adjustment in Contract Times. CONTRACTOR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR's ability to complete the Work within the Contract Times. Such an adjustment shall be CONTRACTOR's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the OWNER, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. CONTRACTOR shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CONTRACTOR.
- G. CONTRACTOR must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 *Availability of Lands*

- A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work.
- B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which permanent

improvements are to be made and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

- C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. CONTRACTOR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CONTRACTOR's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.
 2. If a damage or injury claim is made by the OWNER or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible, CONTRACTOR shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such OWNER or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such OWNER or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CONTRACTOR's performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.
- B. *Removal of Debris during Performance of the Work:* During the progress of the Work the CONTRACTOR shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and the Work and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: ~~The Supplementary Conditions~~ **Section 503.C** identify:

1. those reports known to OWNER of explorations and tests of subsurface conditions at or adjacent to the Site;
2. those drawings known to OWNER of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
3. Technical Data contained in such reports and drawings.

- B. *Reliance by CONTRACTOR on Technical Data Authorized*: CONTRACTOR may rely upon the accuracy of the Technical Data expressly identified in the ~~Supplementary~~ **General Conditions** with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CONTRACTOR may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to CONTRACTOR. Except for such reliance on Technical Data, CONTRACTOR may not rely upon or make any claim against OWNER or ENGINEER, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

- C. **In the preparation of Drawings and Specifications, ENGINEER or ENGINEER's Consultants relied upon the following reports of exploration and tests of subsurface conditions at the site:**

1. **Report dated May 2016 by Nelson Engineering consisting of 16 pages including exhibits. The "technical data" contained in said report specifically the "Test Pit Log" data, may be relied upon by CONTRACTOR.**

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by CONTRACTOR*: If CONTRACTOR believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which CONTRACTOR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting CONTRACTOR to do so. **CONTRACTOR's failure to give notice of differing site conditions within 15 days of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.**

- B. *ENGINEER's Review:* After receipt of written notice as required by the preceding paragraph, ENGINEER will promptly review the subsurface or physical condition in question; determine the necessity of OWNER's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from CONTRACTOR; prepare recommendations to OWNER regarding the CONTRACTOR's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise OWNER in writing of ENGINEER's findings, conclusions, and recommendations.
- C. *OWNER's Statement to CONTRACTOR Regarding Site Condition:* After receipt of ENGINEER's written findings, conclusions, and recommendations, OWNER shall issue a written statement to CONTRACTOR (with a copy to ENGINEER) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting ENGINEER's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
 1. CONTRACTOR shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. CONTRACTOR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR's ability to complete the Work within the Contract Times.
 2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. CONTRACTOR knew of the existence of such condition at the time CONTRACTOR made a commitment to OWNER with respect to Contract Price and Contract

Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

- b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such commitment; or
 - c. CONTRACTOR failed to give the written notice as required by Paragraph 5.04.A.
3. If OWNER and CONTRACTOR agree regarding CONTRACTOR's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. CONTRACTOR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after OWNER's issuance of the OWNER's written statement to CONTRACTOR regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *CONTRACTOR's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to OWNER or ENGINEER by the OWNERS of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the ~~Supplementary~~ **General** Conditions:
 1. OWNER and ENGINEER do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the OWNERS (including OWNER) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by CONTRACTOR:* If CONTRACTOR believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the OWNER of such Underground Facility and give written notice to that OWNER and to OWNER and ENGINEER.
- C. *ENGINEER's Review:* ENGINEER will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from CONTRACTOR; prepare recommendations to OWNER regarding

the CONTRACTOR's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise OWNER in writing of ENGINEER's findings, conclusions, and recommendations. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

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

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The ~~Supplementary~~ **General** Conditions identify:
1. ~~those~~ **there are no** reports and drawings known to OWNER relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the accuracy of the Technical Data expressly identified in the ~~Supplementary~~ **General** Conditions with respect to such reports and drawings, but such reports and drawings are

not Contract Documents. If no such express identification has been made, then CONTRACTOR may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to CONTRACTOR. Except for such reliance on Technical Data, CONTRACTOR may not rely upon or make any claim against OWNER or ENGINEER, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any CONTRACTOR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. CONTRACTOR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. CONTRACTOR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If CONTRACTOR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, then CONTRACTOR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with ENGINEER, OWNER shall take such actions as are necessary to permit OWNER to timely obtain required permits and provide CONTRACTOR the written notice required by Paragraph 5.06.F. If CONTRACTOR or anyone for whom CONTRACTOR is responsible created the Hazardous Environmental Condition in question, then OWNER may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. CONTRACTOR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after OWNER has obtained any required permits related thereto, and delivered written notice to CONTRACTOR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. CONTRACTOR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of CONTRACTOR's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the ~~Supplementary~~ **General** Conditions, or other specific

provisions of the Contract. CONTRACTOR shall also furnish such other bonds as are required by the ~~Supplementary~~ **General** Conditions or other specific provisions of the Contract.

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

6.02 *Insurance—General Provisions*

- A. ~~OWNER and~~ CONTRACTOR shall obtain and maintain insurance as required in this Article ~~and in the Supplementary Conditions.~~
- B. All insurance required by the Contract to be purchased and maintained by ~~OWNER or~~ CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the ~~Supplementary~~ **General** Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. CONTRACTOR shall deliver to OWNER, with copies to each named insured and additional insured (as identified in this Article, ~~in the Supplementary Conditions,~~ or elsewhere in the Contract), certificates of insurance establishing that CONTRACTOR has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by OWNER or any other insured, CONTRACTOR shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. **CONTRACTOR shall be responsible for any deductible or self-insured retention.** CONTRACTOR may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

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

6.03 *CONTRACTOR's Insurance*

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

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

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

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

indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

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

K. **CONTRACTORS Liability Insurance**

1. **The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall not be less than the following amounts.**

A. **Workers' Compensation and related coverages:**

1. **State: Statutory**
2. **Applicable Federal (e.g. Longshoreman's): Statutory**
3. **Jones Act coverage, if applicable**

a. **Bodily injury by accident, each accident** **\$ 1,000,000**

b. **Bodily injury by disease, aggregate** **\$ 1,000,000**

B. **Employer's Liability**

a. **Bodily injury, each accident** **\$ 1,000,000**

b. **Bodily injury by disease, each employee** **\$ 1,000,000**

c. **Bodily injury/disease aggregate** **\$ 2,000,000**

C. **Contractor's Comprehensive General Liability Insurance:**

1. **General Aggregate** **\$ 2,000,000**

2. **Products—Completed Operations Aggregate** **\$ 2,000,000**

3. **Personal and Advertising Injury** **\$ 1,000,000**

4. **Each Occurrence (Bodily Injury and Property Damage)** **\$ 1,000,000**

D. **Automobile Liability Insurance:**

1. **Combined Single Limit of Bodily Injury** **\$ 1,000,000**
And Property Damage

E. **Required Excess/Umbrella Liability Insurance:**

1. **Per Occurrence** **\$ 1,000,000**

2. **General Aggregate** **\$ 1,000,000**

F. **Contractor's Professional Liability if required:**

1. **Each claim** **\$ 1,000,000**

2. **Annual aggregate** **\$ 2,000,000**

G. Additional insured coverage under the Contractor's Commercial General Liability policy(ies) for Owner and Engineer, and others listed will be provided, subject to customary exclusions for professional liability.

1. By endorsement as additional insureds on Contractor's Commercial General Liability policy.

List here by name and address any additional individuals or entities (in addition to Owner and Engineer) as additional insureds under the required liability policies:

H. Other Liability Insurance, if any, e.g., Railroad Protective Liability

Provided By:

Type of Coverage:

6.04 *OWNER's Liability Insurance*

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

6.05 *Property Insurance*

- A. ~~*Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary General Conditions or required by Laws and Regulations). This insurance shall:~~
 - 1. ~~include the OWNER and CONTRACTOR as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding General Conditions, the parties required to be insured shall collectively be referred to as "insureds."~~
 - 2. ~~be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as~~

~~may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to OWNER and CONTRACTOR.~~

- ~~3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including OWNER furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.~~
 - ~~4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of ENGINEERS and architects).~~
 - ~~5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).~~
 - ~~6. extend to cover damage or loss to insured property while in transit.~~
 - ~~7. allow for partial occupation or use of the Work by OWNER, such that those portions of the Work that are not yet occupied or used by OWNER shall remain covered by the builder's risk insurance.~~
 - ~~8. allow for the waiver of the insurer's subrogation rights, as set forth below.~~
 - ~~9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.~~
 - ~~10. not include a co-insurance clause.~~
 - ~~11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.~~
 - ~~12. include performance/hot testing and start up.~~
 - ~~13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by OWNER, until the Work is complete.~~
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

- ~~D. *Partial Occupancy or Use by OWNER:* If OWNER will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then OWNER (directly, if it is the purchaser of the builder's risk policy, or through CONTRACTOR) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by OWNER may come off the builder's risk policy, while those portions of the Work not yet occupied or used by OWNER shall remain covered by the builder's risk insurance.~~
- ~~E. *Additional Insurance:* If CONTRACTOR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at CONTRACTOR's expense.~~
- ~~F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by CONTRACTOR, a Subcontractor, or an employee of CONTRACTOR or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.~~

6.06 *Waiver of Rights*

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

- C. ~~Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, or ENGINEER, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~
- D. CONTRACTOR shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against OWNER, CONTRACTOR, all individuals or entities identified in the ~~Supplementary~~ **General** Conditions as insureds, the ENGINEER and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by ~~builder's risk insurance and~~ any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

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

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon CONTRACTOR furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, CONTRACTOR may request that ENGINEER authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If ENGINEER in its sole discretion determines that an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, ENGINEER shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment ENGINEER determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to OWNER.
- b. CONTRACTOR certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the OWNER or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *CONTRACTOR's Expense*: CONTRACTOR shall provide all data in support of any proposed "or equal" item at CONTRACTOR's expense.
- C. *ENGINEER's Evaluation and Determination*: ENGINEER will be allowed a reasonable time to evaluate each "or-equal" request. ENGINEER may require CONTRACTOR to furnish additional data about the proposed "or-equal" item. ENGINEER will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until ENGINEER's review is complete and ENGINEER determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. ENGINEER will advise CONTRACTOR in writing of any negative determination.
- D. *Effect of ENGINEER's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The ENGINEER's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If ENGINEER determines that an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item, CONTRACTOR may request that ENGINEER considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CONTRACTOR may request that ENGINEER authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. ENGINEER will not accept requests for review of proposed substitute items of material or equipment from anyone other than CONTRACTOR.
 2. The requirements for review by ENGINEER will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as ENGINEER may decide is appropriate under the circumstances.

3. CONTRACTOR shall make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other CONTRACTORS affected by any resulting change.
- B. *ENGINEER's Evaluation and Determination:* ENGINEER will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from OWNER. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item. ENGINEER will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until ENGINEER's review is complete and ENGINEER determines that the proposed item is an acceptable substitute. ENGINEER's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. ENGINEER will advise CONTRACTOR in writing of any negative determination.
- C. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of ENGINEER's Cost:* ENGINEER will record ENGINEER's costs in evaluating a substitute proposed or submitted by CONTRACTOR. Whether or not ENGINEER approves a substitute so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the reasonable charges of ENGINEER for evaluating each such proposed substitute. CONTRACTOR shall also reimburse OWNER for the reasonable charges of

ENGINEER for making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER) resulting from the acceptance of each proposed substitute.

- E. *CONTRACTOR's Expense*: CONTRACTOR shall provide all data in support of any proposed substitute at CONTRACTOR's expense.
- F. *Effect of ENGINEER's Determination*: If ENGINEER approves the substitution request, CONTRACTOR shall execute the proposed Change Order and proceed with the substitution. The ENGINEER's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. CONTRACTOR may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. CONTRACTOR may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to OWNER.
- B. CONTRACTOR shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of CONTRACTOR's Bid or final negotiation of the terms of the Contract, OWNER may not require CONTRACTOR to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which CONTRACTOR has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, CONTRACTOR shall submit to OWNER the identity of the proposed Subcontractor or Supplier (unless OWNER has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to OWNER unless OWNER raises a substantive, reasonable objection within five days.
- E. OWNER may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by CONTRACTOR to perform any part of the Work. OWNER also may require CONTRACTOR to retain specific replacements; provided, however, that OWNER may not require a replacement to which CONTRACTOR has a reasonable objection. If CONTRACTOR has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by OWNER, and OWNER has accepted it (either in writing or by failing to make written objection thereto), then OWNER may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If OWNER requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by CONTRACTOR to perform any part of the Work, then CONTRACTOR shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and CONTRACTOR shall initiate a Change Proposal for such adjustment within 30 days of OWNER's requirement of replacement.
- G. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of OWNER to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis CONTRACTOR shall submit to ENGINEER a complete list of all Subcontractors and Suppliers having a direct contract with CONTRACTOR, and of all other Subcontractors and Suppliers known to CONTRACTOR at the time of submittal.
- I. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.
- J. CONTRACTOR shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. CONTRACTOR shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with ENGINEER or OWNER, except through CONTRACTOR or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for CONTRACTOR by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER.
- N. OWNER may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to CONTRACTOR on account of Work performed for CONTRACTOR by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

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

out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

- C. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. CONTRACTOR shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.
- B. If CONTRACTOR performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all resulting costs and losses, and shall indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be CONTRACTOR's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under Paragraph 3.03.
- C. OWNER or CONTRACTOR may give notice to the other party of any changes after the submission of CONTRACTOR's Bid (or after the date when CONTRACTOR became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations

having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice CONTRACTOR may submit a Change Proposal, or OWNER may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNER; the OWNERS of adjacent property, Underground Facilities, and other utilities; and other CONTRACTORS and utility OWNERS performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. CONTRACTOR shall comply with the applicable requirements of OWNER's safety programs, if any. The ~~Supplementary~~ **General** Conditions identify any OWNER's safety programs that are applicable to the Work.
- D. CONTRACTOR shall inform OWNER and ENGINEER of the specific requirements of CONTRACTOR's safety program with which OWNER's and ENGINEER's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to

perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. CONTRACTOR's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. CONTRACTOR's duties and responsibilities for safety and protection shall resume whenever CONTRACTOR or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. **CONTRACTOR shall provide an on-site "competent person", as defined by OSHA 1926.650(b) to monitor and regulate safety related issues associated with CONTRACTOR's means and methods of constructing the Work.**

7.14 *Hazard Communication Programs*

- A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
 - 1. Before submitting a Shop Drawing or Sample, CONTRACTOR shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to CONTRACTOR's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
 2. Each submittal shall bear a stamp or specific written certification that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review of that submittal, and that CONTRACTOR approves the submittal.
 3. With each submittal, CONTRACTOR shall give ENGINEER specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* CONTRACTOR shall submit Shop Drawings and Samples to ENGINEER for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as ENGINEER may require.
 1. *Shop Drawings:*
 - a. CONTRACTOR shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by Paragraph 7.16.D.
 2. *Samples:*
 - a. CONTRACTOR shall submit the number of Samples required in the Specifications.
 - b. CONTRACTOR shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.
- C. *Other Submittals:* CONTRACTOR shall submit other submittals to ENGINEER in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *ENGINEER's Review:*
 1. ENGINEER will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after

installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. ENGINEER's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. ENGINEER's review and approval of a Shop Drawing or Sample shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has complied with the requirements of Paragraph 7.16.A.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. ENGINEER will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. ENGINEER's review and approval of a Shop Drawing or Sample shall not relieve CONTRACTOR from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. ENGINEER's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither ENGINEER's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. CONTRACTOR shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

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

7.17 *CONTRACTOR's General Warranty and Guarantee*

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

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CONTRACTOR under the Contract or otherwise, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against OWNER or ENGINEER or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of CONTRACTOR under Paragraph 7.18.A shall not extend to the liability of ENGINEER and ENGINEER's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. CONTRACTOR will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out CONTRACTOR's responsibilities for construction means, methods, techniques, sequences and procedures. CONTRACTOR shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of CONTRACTOR by the Contract Documents, OWNER and ENGINEER will specify all performance and design criteria that such services must satisfy. CONTRACTOR shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to ENGINEER.
- C. OWNER and ENGINEER shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided OWNER and ENGINEER have specified to CONTRACTOR all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, ENGINEER's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. ENGINEER's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. CONTRACTOR shall not be responsible for the adequacy of the performance or design criteria specified by OWNER or ENGINEER.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

8.02 *Coordination*

- A. If OWNER intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with OWNER's employees, or to arrange to have utility OWNERS perform work at or adjacent to the Site, the following will be set forth in the ~~Supplementary~~ **General** 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~~ **General** Conditions, OWNER shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for OWNER, the OWNER's employees, any other CONTRACTOR working for OWNER, or any utility OWNER for whom the OWNER is responsible causes damage to the Work or to the property of CONTRACTOR or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then CONTRACTOR shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. CONTRACTOR must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to CONTRACTOR in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on CONTRACTOR assigning to OWNER all CONTRACTOR's rights against such other CONTRACTOR or utility OWNER with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. CONTRACTOR's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR's ability to complete the Work within the Contract Times.

- B. CONTRACTOR shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of OWNER, any other CONTRACTOR, or any utility OWNER performing other work at or adjacent to the Site. If CONTRACTOR fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then OWNER may impose a set-off against payments due to CONTRACTOR, and assign to such other contractor or utility owner the OWNER's contractual rights against CONTRACTOR with respect to the breach of the obligations set forth in this paragraph.

- C. When OWNER is performing other work at or adjacent to the Site with OWNER's employees, CONTRACTOR shall be liable to OWNER for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by OWNER as a result of CONTRACTOR's failure to take reasonable and customary measures with respect to OWNER's other work. In response to such damage, delay, disruption, or interference, OWNER may impose a set-off against payments due to CONTRACTOR.

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

and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 *Communications to CONTRACTOR*

- A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

9.02 *Replacement of ENGINEER*

- A. OWNER may at its discretion appoint an ENGINEER to replace ENGINEER, provided CONTRACTOR makes no reasonable objection to the replacement ENGINEER. The replacement ENGINEER’s status under the Contract Documents shall be that of the former ENGINEER.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on OWNER’s Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *OWNER's Representative*

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

10.02 *Visits to Site*

- A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.
- B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work, ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If OWNER and ENGINEER have agreed that ENGINEER will furnish a Resident Project Representative to represent ENGINEER at the Site and assist ENGINEER in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the ~~Supplementary~~ **General Conditions**, and limitations on the responsibilities thereof will be as provided in Paragraph

10.08. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the ~~Supplementary~~ **General Conditions**.

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on ENGINEER's Authority and Responsibilities*

- A. Neither ENGINEER's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. *Change Orders:*

- a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
- b. OWNER and CONTRACTOR may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the ENGINEER. Such an amendment shall be set forth in a Change Order.

- 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. CONTRACTOR must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. OWNER must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 *OWNER-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

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

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

- A. CONTRACTOR shall submit a Change Proposal to ENGINEER to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by ENGINEER concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

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

11.07 Execution of Change Orders

- A. OWNER and CONTRACTOR shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an OWNER set-off, unless CONTRACTOR has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by OWNER pursuant to Paragraph 11.02, (b) required because of OWNER's acceptance of defective Work under Paragraph 14.04 or OWNER's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for ENGINEER's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If OWNER or CONTRACTOR refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

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

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

13.01 Cost of the Work

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to ENGINEERS, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly

or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

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

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

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

13.02 Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed

for such sums and by such persons or entities as may be acceptable to OWNER and ENGINEER.

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

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to CONTRACTOR for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.
- D. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of the following paragraph.

Within 30 days of ENGINEER's written decision under the preceding paragraph, CONTRACTOR may submit a Change Proposal, or OWNER may file a Claim, seeking an adjustment in the Contract Price if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs ~~materially and significantly~~ **by more than 25%** from the estimated quantity **and the total cost of the particular item of Unit Cost Work amount to 10% or more of the Contract Price** of such item indicated in the Agreement;
2. there is no corresponding adjustment with respect to any other item of Work; and
3. CONTRACTOR believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by OWNER, ENGINEER, or another designated individual or entity, then CONTRACTOR shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, CONTRACTOR shall, if requested by ENGINEER, uncover such Work for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR had given ENGINEER timely notice of

CONTRACTOR's intention to cover the same and ENGINEER had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

- A. ENGINEER has the authority to require 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, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CONTRACTOR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *OWNER May Stop the Work*

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

14.07 *OWNER May Correct Defective Work*

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

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

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

15.01 Progress Payments

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

ENGINEER's observations of the executed Work as an experienced and qualified design professional, and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

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

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

D. *Payment Becomes Due:*

- 1. ~~Ten~~ **Twenty** days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended (subject to any OWNER set-offs) will become due, and when due will be paid by OWNER to CONTRACTOR.

E. *Reductions in Payment by OWNER:*

- 1. In addition to any reductions in payment (set-offs) recommended by ENGINEER, OWNER is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against OWNER on account of CONTRACTOR's conduct in the performance or furnishing of the Work, or OWNER has incurred costs, losses, or damages on account of CONTRACTOR's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. **OWNER has been required to pay ENGINEER additional compensation because of CONTRACTOR delays or rejection of defective Work.**
 - c. 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;
 - d. CONTRACTOR has failed to provide and maintain required bonds or insurance;
 - e. OWNER has been required to remove or remediate a Hazardous Environmental Condition for which CONTRACTOR is responsible;
 - f. 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;
 - g. the Work is defective, requiring correction or replacement;
 - h. OWNER has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - i. the Contract Price has been reduced by Change Orders;
 - j. an event that would constitute a default by CONTRACTOR and therefore justify a termination for cause has occurred;
 - k. liquidated damages have accrued as a result of CONTRACTOR's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - l. 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;

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

15.02 *CONTRACTOR's Warranty of Title*

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

15.03 *Substantial Completion*

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

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

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment:*

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

B. *ENGINEER's Review of Application and Acceptance:*

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

payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

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

The OWNER shall make the final payment to the CONTRACTOR pursuant to Wyoming Statutes 16-6-116 and 16-6-117. If no claims have been filed within a forty-one (41) day period after the advertised completion and acceptance of the Work, final payment shall be due within 20 days thereafter.

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

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

not limited to all fees and charges of ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *OWNER May Suspend Work*

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

16.02 *OWNER May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by CONTRACTOR and justify termination for cause:
 - 1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of CONTRACTOR to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. CONTRACTOR's repeated disregard of the authority of OWNER or ENGINEER.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving CONTRACTOR (and any surety) ten days written notice that OWNER is considering a declaration that CONTRACTOR is in default and termination of the contract, OWNER may proceed to:
 - 1. declare CONTRACTOR to be in default, and give CONTRACTOR (and any surety) notice that the Contract is terminated; and

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

16.03 *OWNER May Terminate For Convenience*

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

16.04 *CONTRACTOR May Stop Work or Terminate*

- A. If, through no act or fault of CONTRACTOR, (1) the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or (2) ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or (3) OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the contract and recover from OWNER payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph are not intended to preclude CONTRACTOR from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____ *(seal)*

Contractor's Name and Corporate Seal

_____ *(seal)*

Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____

Signature

Attest: _____

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
 - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 7. The total amount of previous payments received by the Claimant; and
 - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

Unless otherwise specified on the plans or Special Provisions included in the contract, the Work shall conform to the 2010 Edition of the Wyoming Department of Transportation Standard Specifications for Road and Bridge Construction including all published amendments. These Special Provisions supplement, amend, and where in conflict therewith, supersede the Wyoming Department of Transportation (WYDOT) Standard Specifications for Road and Bridge Construction. Only sections that are amended are listed below. Other applicable sections are incorporated by reference. To obtain copies of the WYDOT Specifications contact the Wyoming Department of Transportation at 307. 777.4435.

SPECIAL PROVISIONS TO THE WYOMING DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS

<u>SECTION</u>	<u>TITLE</u>
100	GENERAL PROVISIONS
105	CONTROL OF WORK
109	MEASUREMENT AND PAYMENT / FORCE ACCOUNT
201	CLEARING AND GRUBBING
203	EXCAVATION AND EMBANKMENT
207	TOPSOIL
215	CONTRACTOR STORMWATER POLLUTION PREVENTION
216	SEEDING FERTILIZER AND SODDING
217	GEOTEXTILES
301	AGGREGATE SUBBASE / BASE COURSE
406	PLANT MIX PAVEMENT (COMMERCIAL MIX)
509	BLOCK RETAINING WALL
603	CULVERTS AND STORMDRAINS
607	FENCES
703.4	PERMANENT STRIPING

DIVISION 100 GENERAL PROVISIONS

The Project Manual utilizes the Engineers Joint Council Document Committee (EJCDC) Instructions to Bidders, Bid Form, Contract Agreement and General Conditions. If the EJCDC documents conflict with the WYDOT General Provisions, the EJCDC documents govern.

END OF SECTION

SECTION 105 CONTROL OF WORK

A. *Delete Section 105.9.2 in its entirety and substitute the following in its place:*

The CONTRACTOR shall provide construction staking for the project.

END SECTION

SECTION 109
MEASUREMENT AND PAYMENT / FORCE ACCOUNT

109.4.4 FORCE ACCOUNT

Delete this Section in its entirety and substitute the following in its place:

PART 1 DESCRIPTION

1.01 FORCE ACCOUNT

- A. This item is provided to budget for unforeseen and minor items not addressed in the project design and construction documents, which will be paid as authorized by OWNER.

PART 4 CONSTRUCTION

4.01 AUTHORIZATION

- A. Items proposed for Force Account shall be reviewed and authorized by OWNER.
- B. Proposed Force Account items not approved by OWNER shall not qualify for payment as Force Account work.
- C. All approved Force Account work shall be documented with daily summaries of all labor hours and rates, equipment, material invoices and other appropriate information that will be reviewed and approved by the ENGINEER and shall be provided to the ENGINEER within five working days of the actual event. If the documentation is not provided within this time period, the OWNER may deny payment of the work.

PART 5 MEASUREMENT AND PAYMENT

5.01 METHOD OF MEASUREMENT

- A. Depending on the nature of the work involved, Force Account work shall be priced on a lump sum, unit price, time and materials basis, or some other combination. Methods of measurement shall be approved prior to performing the Force Account work.

5.02 BASIS OF PAYMENT

- A. Force Account authorized and approved by the OWNER shall be paid as work under the contract. Force Account work shall be included with the CONTRACTOR's regular progress payment applications with supporting cost documentation attached.

END OF SECTION

**SECTION 201
CLEARING AND GRUBBING**

- A. *Delete Section 201.5 / Measurement and Payment in its entirety and substitute the following in its place:*

This work will be paid for by the Force Account bid item. Reference Special Provisions / Section 109.

END SECTION

**SECTION 203
EXCAVATION AND EMBANKMENT**

PART 1 DESCRIPTION

This section describes the requirements for Topsoil Stripping, Unclassified Excavation Above Subgrade, Unclassified Excavation Below Subgrade, Subgrade Preparation, Compaction and Proof Rolling. The work consists of moisture conditioning material, compaction, testing subgrade, and replacement of unstable areas in accordance with these Specifications and in conformity with the lines, grades, and dimensions as shown on the Plans or as established.

PART 2 MATERIALS

- A. Borrow Special Excavation material (Imported Borrow) shall be furnished and installed by the Contractor at locations designated in the Drawings and as directed by the Engineer. Imported Borrow shall consist of imported soils meeting USCS classification GP, GW, GM, SW, SP, SM, ML, CL-ML as determined by ASTM D2487. Soil shall have a Plasticity Index (PI) <10 and Liquid Limit <30 per ASTM D-4318 and meet the following gradation as tested in accordance with ASTM D-422:

<u>Sieve Size</u>	<u>Percent Passing</u>
8 inch	100
3-inch	100-75

No trash, debris, frozen chunks, or other deleterious material are allowed.

PART 4 CONSTRUCTION

4.01 TOPSOIL STRIPPING

- A. Prior to beginning excavation and embankment activities, topsoil shall be stripped to a nominal depth of 4" for the entire earthwork width and windrowed off to the side of the pathway cross section. If the CONTRACTOR chooses to remove the topsoil from the immediate area due to limited working space and stockpile the material in another location, this work shall be considered subsidiary to this item.

4.02 UNCLASSIFIED EXCAVATION ABOVE SUBGRADE

- A. Subgrade Preparation shall be defined as in situ material below pit run subbase elevation for all lengths of the pathway as shown on the plans.
- B. Embankment (non rocky) material shall be placed in uniform layers not exceeding eight inches (8”) in loose thickness for the entire width of the embankment. Each layer of embankment shall be completed, leveled and compacted before the succeeding layer is placed.
- C. Subgrade shall be moisture conditioned, as required, and compacted to 90% AASHTO T-99 for acceptance by proof rolling as evaluated by Engineer.
- D. Compacting Rocky material.
 - 1. Rocky materials shall be defined as coarse-grained materials having at least 50 percent retained by weight on the #4 sieve that cannot be tested by AASHTO-99 or T-180.
 - 2. Rocky materials shall be moistened and compacted as required for acceptance by proof rolling. Proof rolling shall consist of driving a fully loaded 10 yard cubic truck (approximate weight 50,000 pounds) over the finish subgrade in the presence of the Engineer. Two (2) passes will be required. No base course shall be placed until the Engineer has approved the subgrade compaction.
 - 3. The maximum loose layer thickness for placement of rocky material shall not exceed twelve (12) inches.
 - 4. The minimum compactive effort for each layer of rocky materials shall consist of compacting the material with a mechanically powered vibratory plate or other methods approved by the Owner’s Representative.
 - 5. Water shall be added during placement of the rocky material to facilitate compaction. The application of water shall be limited to avoid saturating sub-grade soils.
 - 6. CONTRACTOR shall determine the layer thickness, compactive effort, and additional moisture required for consolidating and compacting the material.
 - 7. Unstable areas identified by ENGINEER shall be sub-excavated, replaced, and retested prior to placement of the succeeding layer. Unstable areas resulting from CONTRACTOR’S operation or schedule will not qualify for additional payment.
- E. Proof Rolling
 - 1. Proof rolling shall be conducted on the final surface of the subgrade layer in the presence of ENGINEER prior to acceptance. Proof rolling shall consist of driving a fully loaded 10 cubic yard truck (approximately 50,000 pounds), or approved equal, over the entire layer surface.

2. No pit run subbase or base course shall be placed until the Engineer has approved the subgrade compaction.
3. Naturally occurring unstable areas identified by ENGINEER shall be considered Unclassified Excavation Below Subgrade and processed accordingly.

4.03 UNCLASSIFIED EXCAVATION BELOW SUBGRADE

- A. Unclassified Excavation Below Subgrade shall consist of the excavation made due to the unsuitability of the material encountered, as directed by the ENGINEER. No material shall be removed as Excavation Below Subgrade without prior authorization by the ENGINEER.
- B. Unstable areas identified during Subgrade Preparation that are categorized as Unclassified Excavation Below Subgrade shall be sub excavated, replaced with pit run subbase and retested prior to placement of the succeeding layer. Furnishing and placing this material will be paid for under Pit Run Subbase. Unstable areas resulting from CONTRACTOR's operation or schedule will not qualify for additional payment.

PART 5 MEASUREMENT AND PAYMENT

- A. Unclassified Excavation Above Subgrade - Volumetric Basis. This Item shall be measured and paid for by the number of cubic yards in its original position as determined by aerial photogrammetry, computed to the neat lines and grades shown on the plans, except as these lines and grades may be modified in the field by the ENGINEER during construction with measurement to be made by the method of average end area of material acceptably excavated as calculated. The top of cross sections for determining end area shall be the top of the existing surface. Payment shall include excavation including topsoil stripping and storage, loading, hauling, furnishing, placing, compacting, proof rolling and testing. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.
- B. Unclassified Excavation Below Subgrade. This Item shall be measured and paid for per cubic yard for the quantities accepted. Payment shall include excavation, loading, hauling, removal and disposal of unsuitable material. Furnishing, placing, compacting, and testing of Borrow Special Excavation (Imported Borrow) shall be paid for under that bid item. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.
- C. Borrow Special Excavation (Imported Borrow). This Item shall be measured and paid for by the cubic yard for quantities accepted. Payment shall include furnishing, hauling, placing, compacting, and testing of the material and shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.

END OF SECTION

**SECTION 207
TOPSOIL**

PART 1 DESCRIPTION

- A. This section describes requirements for Topsoil Placement and Import Topsoil. “Topsoil Placement” applies to the placement and finish grading of topsoil obtained or salvaged from onsite grading operations. “Import Topsoil” applies to furnishing and placement of topsoil from borrow sources provided by CONTRACTOR.

PART 2 MATERIALS

- A. Import Topsoil shall be fertile and friable soil and shall be clean and free of toxic minerals, chemicals, noxious weeds and rocks larger than 2” in diameter. Import Topsoil sources shall be reviewed and approved by ENGINEER prior to use.

PART 4 CONSTRUCTION

- A. Topsoil obtained from onsite grading areas shall be placed on the adjacent pathway slopes and transitioned to match the existing ground surface to a depth commensurate with available material. The installed depth of onsite topsoil shall be commensurate with the useable material salvaged during the topsoil stripping operation. Once material is initially placed, all rocks, weeds, clumps and other deleterious material larger than 2” in diameter will be removed and disposed of by CONTRACTOR.
- B. Import Topsoil shall not be placed unless specifically authorized by the ENGINEER.
- C. Scarify all compacted subsoil to a depth of 12-inches minimum prior to placing topsoil and seeding. Scarification shall be accomplished through the use of a disc harrow, rock ripper or subsoiler. Tillage or scarification will help control soil erosion and enhance the native plant revegetation effort.

PART 5 MEASUREMENT AND PAYMENT

- A. Topsoil Placement shall be measured and paid for by the lineal foot of pathway centerline of suitable and include material placed on both sides of the pathway centerline. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.
- B. Import Topsoil shall be measured and paid for by the ton in place. For conversion estimates, the assumed unit weight of loose, uncompacted topsoil is approximately 100 lbs. per cubic foot or 1.35 ton per cubic yard. One truck shall be weighed per three loads delivered to site per day to average / calibrate total tonnage provided. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.

END OF SECTION

**SECTION 215
CONTRACTOR STORMWATER POLLUTION PREVENTION**

PART 1 DESCRIPTION

This section consists of control of pollutants and discharges of stormwater from construction and industrial activities, including temporary and permanent measures to prevent erosion

1.01 REFERENCES

- A. Wyoming Standards Specifications for Road and Bridge Construction, 2010 Ed.
- B. WYDEQ DESCRIPTION Permit to Discharge Storm Water Associated with Small Construction Activity Under the Wyoming Pollutant Discharge Elimination System (WYPDES).

PART 2 MATERIALS

- A. All MATERIALS and materials shall conform to Section 215.2 and referenced Subsections of the Wyoming Standards Specifications for Road and Bridge Construction, 2010 Ed.

PART 4 CONSTRUCTION

- A. Perform in accordance with Section 215.4 and all Subsections of the Wyoming Standards Specifications for Road and Bridge Construction, 2010 Ed. Stormwater Control shall be performed by the Contractor in accordance with Subsection 215.4.2.1. Subsection 215.4.2.2 is deleted.
- B. Utilize only existing approaches to access the pathway construction areas. Maintain accesses free of soil tracked from the project. Clean accesses and highway of soils when appropriate or directed by the Engineer or WYDOT.

PART 5 MEASUREMENT AND PAYMENT

- A. Contractor Stormwater Control shall be measured and paid for by the lump sum, which includes preparing and paying for the permit along with all associated monitoring reports and requirements. 25% of the lump sum price for Contractor Stormwater Control will be paid with the first monthly progress payment. Additional monthly progress payments will be prorated based upon the total project work actually performed as compared to the total original contact cost. The total lump sum payment will not exceed the original lump sum bid. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.
- B. Silt Fence and Sediment Logs shall be measured and paid for by the lineal foot installed. Payment shall be considered full compensation for all labor, equipment and all miscellaneous incidentals necessary to complete the work.

END OF SECTION

**SECTION 216
SEEDING, FERTILIZER, AND SODDING**

PART 1 DESCRIPTION

This section describes the requirements for soil preparation, furnishing and spreading seed, hydraulic mulching and erosion control.

PART 2 MATERIALS

A. Seed Mixes: Seed mix for use in the WYDOT right of way is as follows:

Sodar Streambank Wheatgrass	6 lbs pure live seed per acre
Critana Thickspike Wheatgrass	5 lbs pure live seed per acre
Secar Bluebunch Wheatgrass	3 lbs pure live seed per acre
Pryor Slender Wheatgrass	2 lbs pure live seed per acre
Canbar Canby Bluegrass	<u>1 lbs pure live seed per acre</u>
	17 lbs pure live seed per acre
Fertilizer	30 lbs available nitrogen per acre
Dry Mulch (straw grass or hay)	1.5 tons per acre

B. Mulch: Mulch shall be comprised of wood fiber or a blend of wood fiber / straw or wood fiber / recycled paper.

C. All hydraulically applied MATERIALS shall be degradable and shall be free of chemical printing ink, germination inhibitors, herbicide residue, chlorine bleach, rock, metal, plastic, or other materials detrimental to plant life. All dyes shall be non-toxic to plants, animals, and aquatic life and shall not stain concrete, or painted surfaces.

D. Erosion Control Blanket: Erosion control blanket shall be a matting composed of a plain, uniform, open weave of new unbleached single strand jute yarn. Ensure the yarn is of loosely twisted construction and does not vary in thickness by more than one-half its normal diameter. Ensure minimum of 78 yarn counts per width (warp) and a minimum of 42 yarn counts per linear yard (weft) in accordance with ASTM D-3775. Ensure weight of the matting is 0.92 lbs/sqyd. U-Pin staples shall be as specified in Section 800 of the WYDOT Specifications.

PART 4 CONSTRUCTION

A. Seeding shall be completed on all disturbed areas and areas receiving topsoil at the locations indicated on the Drawings and in accordance with the notes indicated on Drawings.

B. Apply seed mixes hydraulically in a slurry with a minimum amount of 500 lbs per acre of hydraulic mulch. Hydroseeding shall be accomplished using a multi-step process and shall not be applied with a large quantity of mulch on the first pass.

1. The site shall be seeded by hand or with a broadcast seeder. Seed shall be sown in the Fall after October 15 or before major snowfall. Seed shall not be broadcast on snow-covered ground. After seeding, the seed shall be rolled, harrowed, or raked into topsoil no more than 1/2" to 3/4" inch deep to ensure maximum seed-to-soil contact. Protect seeded areas from traffic during establishment. Seed shall not be applied to snow covered ground.

2. The hydraulic slurry shall be applied at a rate that covers a minimum of 85% of the soil surface.
 3. Erosion Control Blanket shall be required on slopes 3:1 and steeper and be capable of protecting 2:1 slopes. Mulch shall be applied hydraulically on top of the hydroseed slurry to enhance seedling establishment and to provide temporary erosion control.
 4. On slopes flatter than 3:1, long strand mulch such as wood strands, straw, or wood chips shall be applied over the hydroseed slurry. If straw is used, it shall be “weed free” straw derived from wheat, rice, barley, or native grasses. The mulch layer depth shall be a minimum of one (1) inch thick. Approximately 15% to 20% of the soil surface (hydroseed dye) should be visible through the mulch after application. If straw is utilized, the straw mulch shall be mechanically crimped, rolled, or punched into the soil to anchor the straw in place and prevent displacement by wind.
- C. Weed Management / Control: Noxious and invasive weeds are an ever-present threat when undertaking land-disturbing activities. As such, care shall be taken to wash all equipment and vehicles prior to mobilizing to and from the project site. All disturbed areas shall be maintained weed free during construction and all disturbed areas shall be maintained in a weed free condition during the warranty period. Weed control shall be consistent with Teton County Weed and Pest established procedures and shall be performed at the first sign of weed presence. Weed control after the second growing season to be the responsibility of others.

PART 5 MEASUREMENT AND PAYMENT

- A. Hydraulic Seeding shall be measured and paid for by the Square Yard. Payment shall constitute full compensation for weed management, tillage and decompaction, seedbed preparation, fertilizing, seeding, mulching, tackfier, and all materials, equipment, tools, labor and miscellaneous incidentals necessary to complete this item.
- B. Erosion Control Blanket shall be measured and paid for by the Square Yard. Payment shall constitute full compensation all materials, equipment, tools, labor and miscellaneous incidentals necessary to complete this item.
- C. Placing and spreading topsoil is specified and shall be measured and paid in accordance with Section 207, TOPSOIL.

END OF SECTION

SECTION 301 AGGREGATE SUBBASE / BASE COURSE

PART 2 MATERIALS

- A. CONTRACTOR furnished Pit Run Subbase consisting of screened or unscreened gravel obtained from natural river alluvial deposits. Pit Run material shall be extracted and handled to provide well graded, granular material containing rock no larger than 8 inches in maximum dimension. Furnishing and placing this material will be paid for under Pit Run Subbase.

- B. "WYDOT Grading W Crushed Base" will be provided from a commercial source and meet the Gradation and Properties specified in Section 803 of the Wyoming Standard Specifications for Road and Bridge Construction.

PART 4 CONSTRUCTION

- A. Crushed Base shall be placed using an asphalt laydown machine where possible.

END OF SECTION

SECTION 406 PLANT MIX PAVEMENT (COMMERCIAL MIX)

PART 2 MATERIALS

- A. Pavement used for pathway surfacing and approaches shall meet the following requirements:
- 1) The job mix formula for the bituminous pavement mixture shall meet the following test criteria:

Marshall Stability (pounds)	2000 minimum
Marshall Flow (0.01 in.)	8 to 16
Air Voids: Surface Course	3 to 5%
Base Course	3 to 8%
Voids in Mineral Aggregate	13.0-16.0%
 - 2) The percentage of bituminous material to be added to the job mix formula shall be 4.5 to 7.5%, weight of total mixture.
 - 3) Bituminous material shall be PG58-28.
 - 4) Aggregate for the plant mix bituminous pavement shall conform to the grading in Section 803.5.5-1, 1/2" maximum.
 - 5) Bituminous material used for tack coat shall be SS-1.

PART 5 MEASUREMENT AND PAYMENT

- A. Plant Mix Pavement (Commercial Mix) shall be measured and paid for by the Ton. Payment shall constitute full compensation for all labor, equipment and materials and all miscellaneous incidentals (including Asphalt Binder) necessary to complete the work.

END OF SECTION

SECTION 509
SEGMENTED MASONRY UNIT
RETAINING WALLS

PART 1 DESCRIPTION

1.01 SUMMARY

- A. Work shall consist of furnishing and construction of Keystone Compac Unit Retaining Wall System or equal in accordance with these specifications and in close conformity with the lines, grades, design, and dimensions shown on the Drawings. If the Contractor chooses to utilize and “or equal” wall system, Contractor shall provide design for the “or equal” wall system.
- B. Work includes:
 - 1. Preparing foundation soil, furnishing and installing leveling pad,
 - 2. Furnishing and installation of segmented masonry blocks,
 - 3. Furnish and installation of Drainage Rock masonry unit infill, drainage rock backfill, drain pipe, and geotextile separation fabric,
 - 4. Furnishing and installing geogrid soil reinforcement of the type, size, location, and lengths designated on the Drawings,
 - 5. Furnish and installation of Structural Fill as retaining wall backfill as shown on the Drawings.
 - 6. Engineering design services in the event a wall system equal to the Keystone Wall system shown on the drawings and specified herein is substituted,

1.02 REFERENCE DOCUMENTS

- A. American Society for Testing and Materials (ASTM)
 - 1. ASTM C140 Sampling and Testing Concrete Masonry Units
 - 2. ASTM C1372 Specification for Dry-Cast Segmental Retaining Wall Units
 - 3. ASTM D422 Particle-Size Analysis of Soils
 - 4. ASTM D698 Laboratory Compaction Characteristics of Soil -Standard Effort
 - 5. ASTM D1557 Laboratory Compaction Characteristics of Soil -Modified Effort
 - 6. ASTM D3034 Polyvinyl Chloride Pipe (PVC)
 - 7. ASTM D4318 Liquid Limit, Plastic Limit and Plasticity Index of Soils
 - 8. ASTM D4475 Horizontal Shear Strength of Pultruded Reinforced Plastic Rods
 - 9. ASTM D4476 Flexural Properties of Fiber Reinforced Pultruded Plastic Rods
 - 10. ASTM D4595 Tensile Properties of Geotextiles - Wide Width Strip
 - 11. ASTM D5262 Unconfined Tension Creep Behavior of Geosynthetics
 - 12. ASTM D5818 Evaluate Installation Damage of Geosynthetics
 - 13. ASTM D6637 Tensile Properties of Geogrids – Single or Multi-Rib
 - 14. ASTM D6638 Connection Strength - Reinforcement/Segmental Units
 - 15. ASTM D6706 Geosynthetic Pullout Resistance in Soil
 - 16. ASTM D6916 Shear Strength Between Segmental Concrete Units

- B. American Association of State Highway and Transportation Officials (AASHTO)
 - 1. AASHTO M 252 Corrugated Polyethylene Drainage Pipe
- C. Geosynthetic Research Institute (GRI)
 - 1. GRI-GG4 Determination of Long Term Design Strength of Geogrids
 - 2. GRI-GG5 Determination of Geogrid (soil) Pullout
- D. National Concrete Masonry Association (NCMA)
 - 1. NCMA SRWU-1 Test Method for Determining Connection Strength of SRW
 - 2. NCMA SRWU-2 Test Method for Determining Shear Strength of SRW

1.03 SUBMITTALS / CERTIFICATION

- A. Contractor shall submit a Manufacturer's certification, prior to start of work, that the retaining wall system components meet the requirements of this specification and the structural design.
- B. If an equal wall system to the Keystone Compac Walls shown on the Drawings and specified herein is proposed, Contractor shall submit construction drawings and design calculations for the retaining wall system prepared and stamped by a Professional Engineer registered in Wyoming. The engineering designs, techniques, and material evaluations shall be in accordance with the Manufacturers Design Manual NCMA Design Guidelines for Segmental Retaining Walls, and the AASHTO Standard Specifications for Highway Bridges.

1.04 QUALITY ASSURANCE

- A. Contractor shall submit a list of three previously constructed projects of similar size and magnitude where the geogrid reinforced segmented masonry unit wall has been constructed successfully. Contact names and telephone numbers shall be listed for each project.
- B. Owner will provide soil testing and quality assurance inspection during earthwork and wall construction operations. Contractor shall provide any quality control testing or inspection not provided by the Owner. Owner's quality assurance program does not relieve the contractor of responsibility for quality control and wall performance.

1.05 DELIVERY, STORAGE AND HANDLING

- A. Contractor shall check all materials upon delivery to assure that the proper type, grade, color, and certification have been received.
- B. Contractor shall protect all materials from damage due to jobsite conditions and in accordance with manufacturer's recommendations. Damaged materials shall not be incorporated into the work.

PART 2 MATERIALS

2.01 DEFINITIONS

- A. Keystone Unit - a concrete retaining wall element machine made from Portland cement, water, and aggregates.
- B. Structural Geogrid - a structural element formed by a regular network of integrally connected tensile elements with apertures of sufficient size to allow interlocking with surrounding soil, rock, or earth and function primarily as reinforcement.
- C. Drainage Rock Fill - drainage aggregate that is placed within and immediately behind the Keystone concrete units.
- D. Structural Fill - compacted soil that is placed within the geogrid reinforced soil volume as shown on the Drawings.

2.02 KEYSTONE CONCRETE RETAINING WALL UNITS

- A. Keystone concrete units shall conform to the following architectural requirements:
 - 1. Face color – “Buff” (light brown) as approved by Owner.
 - 2. Face finish -standard in angular tri-planer configuration.
 - 3. Bond configuration - running with bonds nominally located at midpoint vertically adjacent units, in both straight and curved alignments.
 - 4. Exposed surfaces of units shall be free of chips, cracks or other imperfections when viewed from a distance of 10 feet (3 m) under diffused lighting.
- B. Keystone concrete materials shall conform to the requirements of ASTM C1372 - Standard Specifications for Segmental Retaining Wall Units.
- C. Keystone concrete units shall conform to the following structural and geometric requirements measured in accordance with ASTM C140 Sampling and Testing Concrete Masonry Units:
 - 1. Compressive strength: ≥ 3000 psi;
 - 2. Absorption: $\leq 6\%$ for standard weight aggregates;
 - 3. Dimensional tolerances: $\pm 1/8$ " (from nominal unit dimensions not including rough split face, $\pm 1/16$ " unit height - top and bottom planes);
 - 4. Unit size: 8" (H) x 18" (W) x 12" (D) minimum;
 - 1. Unit weight: 75-lbs/unit minimum for standard weight aggregates.
- D. Keystone concrete units shall conform to the following performance testing:
 - 1. Inter-unit shear strength in accordance with ASTM D6916 (NCMA SRWU-2): 600-plf minimum at 2-psi normal pressure;
 - 2. Geogrid/unit peak connection strength in accordance with ASTM D6638 (NCMA SRWU-1): 500-plf minimum at 2-psi normal force.

E. Keystone concrete units shall conform to the following constructability requirements:

1. Vertical setback: 1" per course;
2. Alignment and grid positioning mechanism - fiberglass pins, two per unit minimum;
3. Maximum horizontal gap between erected units shall be $\leq 1/2$ inch.

2.03 SHEAR CONNECTORS

A. Shear connectors shall be 1/2-inch (diameter thermoset isophthalic polyester resin-pultruded fiberglass reinforcement rods to provide connection between vertically and horizontally adjacent units with the following requirements:

1. Flexural Strength in accordance with ASTM D4476: 128,000 psi minimum;
2. Short Beam Shear in accordance with ASTM D4475: 6,400 psi minimum.

B. Shear connectors shall be capable of holding the geogrid in the proper design position during grid pre-tensioning and backfilling.

2.04 BASE LEVELING PAD AGGREGATE STOP

A. Material shall consist of crushed base aggregate Grading H per Specification 02231 compacted to greater than 95% of maximum density determined by ASTM D698.

2.05 DRAINAGE ROCK FILL

A. Drainage Rockfill shall consist of clean 1" minus crushed stone or crushed gravel meeting the following gradation tested in accordance with ASTM D-422:

<u>Sieve Size</u>	<u>Percent Passing</u>
1 inch	100
3/4-inch	75-100
No. 4	0 - 10
No. 50	0 - 5

B. Drainage Rock fill shall be placed within the cores of, between, and behind the units as indicated on the design drawings. Not less than one cubic foot), of Drainage Rock fill shall be used for each square foot (0.093 m²) of wall face unless otherwise specified.

2.06 STRUCTURAL FILL

A. Structural Fill shall be furnished and installed by the Contractor at the locations shown on the drawings. Structural Fill shall be free of debris and meet the following gradation tested in accordance with ASTM D-422:

<u>Sieve Size</u>	<u>Percent Passing</u>
2 inch	100
3/4-inch	100-75
No. 40	0-60
No. 200	0-12

Plasticity Index (PI) <7 and Liquid Limit <20 per ASTM D-4318

2.07 GEOGRID SOIL REINFORCEMENT

- A. Geogrid reinforcement shall consist of Mirafi XT geogrid as shown on the Plans or approved equal.

2.08 DRAINAGE PIPE

- A. Drainage pipe shall be perforated or slotted PVC pipe manufactured in accordance with ASTM D-3034 or corrugated HDPE pipe manufactured in accordance with AASHTO M252.

2.09 GEOTEXTILE FILTER FABRIC

- A. Geotextile filter fabric shall be Mirafi 140N or approved equal.

PART 4 CONSTRUCTION

4.01 EXCAVATION

- A. Contractor shall excavate to the lines and grades shown on the Drawings. Engineer shall inspect the excavation and approve prior to placement of leveling material or fill soils. Proof roll foundation area as directed to determine if remedial work is required.
- B. Over-excavation and replacement of unsuitable foundation soils and replacement with Imported pit run fill will be paid for under the Imported Pit Run Fill Item.

4.02 BASE LEVELING PAD

- A. Leveling pad aggregate shall be placed to the lines and grades shown on the construction drawings, to a minimum thickness of 6 inches and extend laterally a minimum of 6" in front and behind the Keystone wall unit.
- B. Soil leveling pad materials shall be compacted to a minimum of 95 % Standard Proctor density per ASTM D-698 or 92% Modified Proctor Density per ASTM D1557.
- C. Leveling pad shall be prepared to insure full contact to the base surface of the concrete units.

4.03 KEYSTONE UNIT INSTALLATION

- A. First course of units shall be placed on the leveling pad at the appropriate line and grade. Alignment and level shall be checked in all directions and insure that all units are in full contact with the base and properly seated.
- B. Place the front of units side-by-side. Do not leave gaps between adjacent units. Layout of corners and curves shall be in accordance with manufacturer's recommendations.
- C. Install shear/connecting devices per manufacturer's recommendations.

- D. Place and compact drainage rock fill within and behind wall units. Place and compact reinforced backfill soil behind drainage rock fill. Follow wall erection and drainage rock fill closely with reinforced backfill.
- E. Maximum stacked vertical height of wall units, prior to unit drainage rock fill and backfill placement and compaction, shall not exceed two courses.

4.04 GEOGRID INSTALLATION

- A. Geogrid shall be oriented with the highest strength axis perpendicular to the wall alignment.
- B. Geogrid reinforcement shall be placed at the strengths, lengths, and elevations shown on the construction design drawings or as directed by the Engineer.
- C. The geogrid shall be laid horizontally on compacted backfill and attached to the Keystone wall units. Place the next course of Keystone concrete units over the geogrid. The geogrid shall be pulled taut, and anchored prior to backfill placement on the geogrid.
- D. Geogrid reinforcements shall be continuous throughout their embedment lengths and placed side-by-side to provide 100% coverage at each level. Spliced connections between shorter pieces of geogrid or gaps between adjacent pieces of geogrid are not permitted.

4.05 STRUCTURAL FILL PLACEMENT

- A. Structural Fill shall be placed, spread, and compacted in such a manner that minimizes the development of slack in the geogrid and installation damage.
- B. Structural Fill shall be placed and compacted in lifts not to exceed 6 inches where hand compaction is used, or 8 - 10 inches where heavy compaction equipment is used. Lift thickness shall be decreased to achieve the required density as required.
- C. Structural Fill shall be compacted to a minimum of 95 % Standard Proctor density per ASTM D-698 or 92% Modified Proctor Density per ASTM D1557. The moisture content of the backfill material prior to and during compaction shall be uniformly distributed throughout each layer and shall be dry of optimum, + 0%, - 3%.
- D. Only lightweight hand-operated equipment shall be allowed within 3 feet from the tail of the Keystone concrete unit.
- E. Tracked construction equipment shall not be operated directly upon the geogrid reinforcement. A minimum fill thickness of 6 inches is required prior to operation of tracked vehicles over the geogrid. Tracked vehicle turning should be kept to a minimum to prevent tracks from displacing the fill and damaging the geogrid.
- F. Rubber tired equipment may pass over geogrid reinforcement at slow speeds, less than 10 MPH. Sudden braking and sharp turning shall be avoided.

- G. At the end of each day's operation, the Contractor shall slope the last lift of reinforced backfill away from the wall units to direct runoff away from wall face. The Contractor shall not allow surface runoff from adjacent areas to enter the wall construction site.

4.06 CAP INSTALLATION

- A. Cap units shall be glued to underlying units with an all-weather adhesive recommended by the manufacturer such as Keystone Kapseal.

4.07 AS-BUILT CONSTRUCTION TOLERANCES

- A. Vertical alignment: ± 1.5 " over any 10' distance.
- B. Wall Batter: within 2 degrees of design batter.
- C. Horizontal alignment: ± 1.5 " over any 10' distance. Corners, bends & curves: ± 1 foot to theoretical location.
- D. Maximum horizontal gap between erected units shall be $\leq 1/2$ inch.

4.08 FIELD QUALITY CONTROL

- A. Quality Assurance - The Owner may engage inspection and testing services, including independent laboratories, to provide quality assurance and testing services during construction. This does not relieve the Contractor from securing the necessary construction quality control testing.
- B. Quality Assurance should include foundation soil inspection. Verification of geotechnical design parameters, and verification that the contractor's quality control testing is adequate as a minimum. Quality assurance shall also include observation of construction for general compliance with design drawings and project specifications. (Quality Assurance is usually best performed by the site geotechnical engineer.)
- C. Quality Control – The Contractor shall engage inspection and testing services to perform the minimum quality control testing described in the retaining wall design plans and specifications. Only qualified and experienced technicians and engineers shall perform testing and inspection services.
- D. Quality Control testing shall include soil and backfill testing to verify soil types and compaction and verification that the retaining wall is being constructed in accordance with the design plans and project specifications.

PART 5 MEASUREMENT AND PAYMENT

5.01 METHOD OF MEASUREMENT

- A. Block Retaining Wall shall be measured by the square foot of block wall constructed measured from the base to top of wall inclusive of below grade wall and cap units. Measurement consists of providing all trade work, equipment and materials, including

incidentals and subsidiary items called out on the drawings to furnish and install block wall units, drainage rock, geogrid, separation fabric, crushed base aggregate leveling pad, excavations for leveling pad and as required to place geogrid and structural fill, drainage pipe, and excavation and fills required to place wall toe backfill. Structural fill is measured separately.

- B. Structural Fill: Supply and installation of Structural Fill will be measured by the cubic yard. Natural moisture and water added to the material prior to the material being weighed will be measured as the material and will not be deducted from the weight measurement. Water added to the material prior to the material being weighed will not be measured separately for payment.

5.02 BASIS OF PAYMENT

- A. Payment for Block Retaining Wall Items will be made at the contract price per square foot of wall face, said price being full compensation for all materials, labor, haul, equipment and incidentals necessary to furnish and install block wall units, drainage rock, geogrid, separation fabric, crushed base aggregate leveling pad, excavations for leveling pad and as required to place geogrid and structural fill, drainage pipe, and excavation and fills required to place wall toe backfill. Note: Structural Fill is measured separately.
- B. Payment for Structural Fill shall be made at the contract unit price per cubic yard; said payment being full compensation to construct, dewatering, watering, shaping, grading, compaction, preparation of subgrade, foundation preparation, cuts, to remove and to make satisfactory disposal of all unsuitable and surplus materials occurring within the limits of the work, haul, and stockpiling, backfill and compact areas where unstable material has been removed, required submittals and all other incidental items and operations and all associated work as described herein.

END OF SECTION

SECTION 603 CULVERTS AND STORM DRAINS

PART 2 MATERIALS

- A. Culvert piping shall be galvanized, 16 gauge, corrugated steel pipe with 2 2/3 X 1/2 inch corrugations.
- B. Flared Ends for culvert piping shall be galvanized steel sections with a reinforcing edge for round pipe. Ends shall be connected to the annular end of pipe with a flat strap connector and bolt strap or threaded rod and rod holder furnished by the pipe supplier.

END OF SECTION

**SECTION 607
FENCES**

PART 1 DESCRIPTION

- A. This section describes the work required to remove an existing fence and the installation of a new post rail fence.

PART 2 MATERIALS

- A. All rails and fence posts shall be wolmanized, full pressure treated with a minimum CCA value of 0.6.
- B. Screws shall be 6” oly log screws.

PART 4 CONSTRUCTION

- A. Install two screws per rail / post attachment.
- B. Rails shall be installed on the “pathway” side of the post and be “coped” at rail / post interface.

PART 5 MEASUREMENT AND PAYMENT

- A. “Fence (Safety Railing)” shall be measured and paid for by the lineal foot of fence installed complete.
- B. “Fence Removal” shall be measured and paid for by the lineal foot of fence removed and disposed of by Contractor complete.

END OF SECTION

**SECTION 703.4
PERMANENT STRIPING**

PART 1 DESCRIPTION

This section describes the requirements for pathway centerline striping, crosswalks and yield lines.

1.01 REFERENCES

- A. Manual of Uniform Traffic Control Devices
- B. AASHTO Guide for the Planning, Design, and Operation of Bicycle Facilities

1.02 SUBMITTALS FOR REVIEW

- A. Product Data: Provide manufacturer data on paint MATERIALS and application requirements.

1.03 REGULATORY REQUIREMENTS

- A. Striping, lettering and symbols shall conform to size and color requirements of the Manual of Uniform Traffic Control Devices and the AASHTO Guide for the Planning, Design, and Operation of Bicycle Facilities.

PART 2 MATERIALS

- A. Paint for striping, symbols, crosswalks, stop lines, and wording: commercial grade, MPI #32 Alkyd Traffic Marking Paint. Color and dimensional requirements per Drawings.

PART 4 CONSTRUCTION

4.01 INSTALLATION – PATHWAYS

- A. Only apply paint in dry conditions and when atmospheric temperatures exceed 50 degrees F or the minimum recommended by the manufacturer.
- B. Clean surfaces of all debris, sand, dirt, gravel, oil and other foreign material to ensure that the pavement surfaces are ready to receive paint.
- C. Provide a qualified technician to supervise equipment and application of paint. Layout markings using guidelines, and forms. Stencils and templates shall be professionally made to industry standards. Free hand painting of symbols, wording and striping shall not be allowed.
- D. Apply paint with a commercial compressed air or airless spray striping machine capable of applying an even width and coating to produce pavement markings with uniform straight edges and consistent texture. Apply at manufacturer’s recommended rates to provide a wet film thickness of approximately 15mils.
- E. Protect adjacent areas and other items from receiving paint. Sandblast or otherwise remove paint applied to areas not designated to receive pavement markings.
- F. Protect newly applied paint from tracking and damage.
- G. Centerline striping shall be yellow with a width of 4”.
- H. Yield lines shall be white. Dimensions shall be as described in the plan details and shall include “yield ahead” warning.
- I. Cross walk panels shall be white. Each panel shall be 24” wide by 10’ long. Panels shall be located to avoid “wheel track” locations. The “non painted” width shall range from 24” to 36” depending on location.

4.02 INSTALLATION TOLERANCES

- A. All pathway centerline striping, stop lines, lettering, and crosswalk panels - Maximum Variation From alignment: 2 inches.

PART 5 MEASUREMENT AND PAYMENT

- A. Centerline Striping will be paid by the Lineal Foot. Payment shall constitute full compensation for furnishing all materials, equipment and labor to clean the surfaces to receive paint, application of all striping all miscellaneous incidentals necessary to complete the work.
- B. Crosswalk panels will be paid by the square foot. Payment shall constitute full compensation for furnishing all materials, equipment and labor to clean the surfaces to receive paint, application of all striping all miscellaneous incidentals necessary to complete the work.

- C. Yield lines and associated wording shall be paid for by each installation (EA). Payment shall constitute full compensation for furnishing all materials, equipment and labor to clean the surfaces to receive paint, application of all striping all miscellaneous incidentals necessary to complete the work.

END OF SECTION

GEOTECHNICAL REPORT

Geotechnical Investigation

PATHWAY 22 RETAINING WALLS TETON COUNTY, WYOMING

Prepared
For
Teton County Engineering Department
Jackson, WY

Prepared
By
NELSON ENGINEERING
Jackson, Wyoming

MAY 2016
Project No. 15-053-01

TABLE OF CONTENTS

GENERAL AND PROJECT DESCRIPTION	1
SCOPE OF SERVICES	1
SITE CONDITIONS.....	1
SITE DESCRIPTION.....	1
GEOLOGIC MAPPING.....	1
SEISMIC HAZARD	2
SITE INVESTIGATIONS.....	2
FIELD INVESTIGATIONS.....	2
LABORATORY TESTING.....	3
SOIL PROFILES	3
RETAINING WALL DESIGN PARAMETERS.....	3
Seismic Design Parameters	4
CONSTRUCTION CONSIDERATIONS.....	5
EARTHWORK AND SITE GRADING	5
WARRANTY AND LIMITING CONDITIONS.....	6

GENERAL AND PROJECT DESCRIPTION

This report pertains to a geotechnical investigation performed for retaining walls associated with a pathway to be constructed on the south side of State Highway 22 in Teton County, Wyoming. The investigation consisted of a subsurface investigation, laboratory testing, and engineering analyses. Geotechnical assessments and analyses are presented here. Recommendations from this report are both included here and utilized in the preparation of retaining wall plans and specifications prepared by Nelson Engineering and the Teton County Engineering Department.

Scope of Services

The scope of services for this investigation was to provide geotechnical recommendations based on a subsurface investigation and soils laboratory testing for the proposed pathway underpass and pathway retaining wall. The purpose of the subsurface investigation was to determine subsurface conditions. The results of the subsurface investigation and subsequent laboratory testing were utilized in an engineering analysis and resulting recommendations for underpass and retaining wall design.

SITE CONDITIONS

Site Description

The pathway in the vicinity of the proposed retaining walls will be constructed on constructed fill slopes on the south side of Highway 22 within the WYDOT right of way. We assume the fills are composed of material cut from hillside of West Gros Ventre Butte on the north side of the highway. A surficial inspection of the cut slopes was conducted revealing exposed strata of fine grained loess, talus, and ripped/blasted outcrops of several sedimentary bedrock formations.

Geologic Mapping

The project area surface geology is mapped on the USGS "Geologic Map of the Jackson Quadrangle, Teton County, Wyoming," J.D. Love, 2003. Mapped deposits in the areas of proposed improvements are "Ql - Loess - Silt, light gray structureless, homogeneous, deposited by wind" and Qfp - Floodplain deposits - Sand, silt, clay, and minor lenses of gravel." Mapped deposits from the cut slopes above Highway 22 in the project area include loess, "Dd - Darby Formation - Upper part is dolomitic siltstone and shale, dull yellow, thin-bedded; lower part is brown fetid vuggy siliceous brittle dolomite containing sparse thin limestone beds," "Ob - Bighorn Dolomite - Dolomite, light- and dark-gray mottled, siliceous, cliff forming," "Eg - Gallatin Limestone - Bluish-gray mottled, with irregular granular yellow patches; irregularly bedded, hard; forms ragged cliffs," and "Qt - Talus - Locally derived coarse angular rock fragments that accumulated on steep slopes and at the base of cliffs."

Seismic Hazard

Jackson Hole and the project site are located within the Intermountain Seismic Belt, a zone extending from southern Utah through eastern Idaho and western Montana, and encompassing western Wyoming and the Teton Range (Smith and Arabasz, 1991). The "Map of Quaternary Faults and Folds in Wyoming" (Machette et al, 2001) shows the following active faults near the project site: the Teton Fault, Philips Canyon Faults, East Gros Ventre Faults, and secondary faults in the Jackson Hole Valley. In particular, the Teton Fault has a paleoseismic record of producing major earthquakes of a magnitude of seven or greater. The terminus of the southern part of the Teton Fault, as mapped by the USGS Geohazards website, is about 5.5 miles northwest of the project site. The USGS maps the Phillips Canyon Fault about 5.75 miles northwest of the project site. The inferred trace of the Cache Creek Thrust Fault as mapped in the USGS "Geologic Map of the Jackson Quadrangle, Teton County, Wyoming" (J.D. Love, 2003) passes through the eastern portion of the project site south of Highway 22. The Cache Creek Thrust Fault is not mapped as active in the Quaternary in the "Map of Quaternary Fault and Folds in Wyoming" (Machette et al, 2001).

SITE INVESTIGATIONS

Field Investigations

On March 27, 2015, four test pits were excavated in the fill slopes in the general area where retaining walls were proposed. Test pit locations are shown on the drawings in the project plans. Test pits were located approximately with a Trimble GPS unit. Test pit locations and depths were selected to determine subsurface conditions representative of the areas with proposed retaining walls. All test pits were backfilled with excavated material after logging was completed.

Fish Creek Excavation of Jackson, Wyoming, excavated the test pits with a John Deere 50D rubber-tracked excavator. Andy Pruett, a Professional Geologist at Nelson Engineering, logged the test pits and directed the sampling. Soils were classified in the field and logged by the geologist. The soil classifications, moisture conditions, and presence of organic or other notable features were recorded in the field logs. Bulk samples were sealed in plastic bags and transported to our laboratory for testing and further classification. Groundwater observations were made at the time of the excavation based on field observations of soil moisture conditions. Field observations are presented on the test pit logs in the Appendix.

The stratification lines shown on the test pit logs represent the approximate boundary between soil types. Subsurface changes in soil types in both the horizontal and vertical may be closely spaced and abrupt. Due to the nature and depositional characteristics of natural soils and fills, care should be taken in interpolating subsurface conditions beyond the location of the test pits. The soil properties inferred from the field and laboratory analyses

supported by our experience formed the basis for developing our conclusions and recommendations.

Laboratory Testing

Samples obtained during the field investigation were taken to the laboratory where they were visually classified in accordance with ASTM Test Method D-2487-93, which is based on the Unified Soils Classification System. Representative samples were selected for testing to determine the physical properties of the in-place soils and to estimate engineering properties. Engineering properties of concern at this location included unit weight, friction angle, seismic response parameters, and site-specific construction recommendations that are influenced by soil type and condition.

Laboratory testing was conducted to provide additional information to determine the suitability of the soils for use as foundation and subgrade materials and to verify field observations and classification estimates. The finalized laboratory observations were used to estimate soil strength and compressibility characteristics for bearing capacity determinations. Specific tests included Atterberg Limits Tests - ASTM Designation D4318, Grain Size Analysis - ASTM Designation C117 & C136, Soil Moisture Content Determinations - ASTM Designation D2226, and Soil Classification - ASTM Designation D2487.

The soil samples stored in our laboratory will be discarded after 30 days from the date this report is submitted unless we receive a specific request to retain them.

Soil Profiles

TP-1 through TP-4 were excavated into fill slopes which were created during the construction of Highway 22 and the entrance road to the Brown Ranch. The soil profiles of these test pits were similar. Surficial soils in the test pits were composed of 1.5 to 2 feet of moist brown silt topsoil with gravels. The silt topsoil had a stiff to very stiff consistency with corresponding pocket penetrometer readings of 1.0 to 4.0 tons per square foot (TSF). Below the surficial deposits to the bottom of each test pit, soils were composed of erratic lenses of moist to dry brown, dark brown, and gray lean clay, silty clay, or silt with gravels, cobbles, and boulders up to 24-inches maximum dimension. These soils were generally 10 to 40-percent gravels, cobbles, and boulders, and 60 to 90-percent fine grained soils. Gravels, cobbles, and boulders were angular to sub-angular limestone and dolomite clasts. The fine grained soils contained no pinhole voids and generally exhibited a stiff to very stiff consistency with corresponding pocket penetrometer readings of 1.0 to 3.5 TSF when moist and exhibited a hard consistency with corresponding pocket penetrometer readings greater than 4.0 TSF when dry.

RETAINING WALL DESIGN PARAMETERS

Design parameters for MSE retaining walls were derived from soil strength assessments derived from data collected in the test pit excavation. Mixtures of clay, silt, cobbles and gravels in historic roadway fills were assigned a friction angle of 28 degrees and a cohesion of 500 psf based on pocket penetrometer readings and engineering judgement. Bearing capacity and global slope stability determinations performed using these soil strength parameters resulted in Factors of Safety of 2.3 or greater.

Any soil type encountered in retaining wall excavations other than the ones described herein, including isolated boulders, should be analyzed by this office, or removed and replaced with structural fill. Any excessively loose material or soft spots encountered in the footing subgrade will require over-excavation and backfilling with structural fill. All footings shall be suitably reinforced to make them as rigid as possible.

Seismic Design Parameters

Peak ground acceleration with a 10% chance of exceedance from the USGS Earthquake Hazards website was used in retaining wall design using SRWall. Retaining wall design using this level of ground motion is judged to be conservative and appropriate for a non-essential pathway structure. Liquefaction analysis was not performed. Well logs and nearby geotechnical investigations have not revealed liquefiable sand in this area of Teton County. The probability of liquefaction beneath the site is considered to be low and in the event liquefiable sands were found with a deeper investigation the cost of constructing a non-essential pathway such that liquefaction is remediated would not be warranted.

CONSTRUCTION CONSIDERATIONS

Earthwork and Site Grading

Excavation work and heavy equipment access will be difficult when wet conditions exist. A protracted period of wet conditions can be expected during and after seasonal snowmelt. Placement of gravel surfacing and/or free-draining native material supported by geotextiles may be necessary to provide construction access when ground conditions are wet. General recommendations for earthwork suitability, placement, and compaction procedures are provided below:

- Within the footprint of retaining wall and tunnel footprints, all organic material, deleterious undocumented fill, and debris should be stripped and removed. Loose and disturbed native soils should be scarified, moisture-conditioned, and compacted. Finish surfaces shall be sloped away from foundations.
- Silt and clay extant in the excavations will exhibit undesirable engineering properties when wetted. Every effort shall be made to ensure that moisture from rainfall and groundwater does not infiltrate fill subgrades, structure bearing soils, and pathway subgrade soils during construction: measures may include tarp placement and tenting. Grading during construction shall be provided to drain storm water from the exposed excavations during precipitation and snowmelt events. In case of rain or snow, excavation work shall stop and exposed soils shall be covered to prevent moisture infiltration. If moisture has been allowed to infiltrate the subgrade and bearing soils in any fashion, filling and excavation operations should not resume until Nelson Engineering approves the moisture and density conditions of the subgrade soils.
- Fill materials shall not be placed, spread, or compacted while the ground is frozen or during unfavorable weather conditions. Fill materials should be at the proper moisture content prior to compaction and should contain no frozen soil.
- Safety of construction personnel including safe trenches and excavations are the responsibility of the contractor. Excavations for retaining walls and foundations shall conform to the applicable OSHA and Wyoming safety standards. Excavations and utility trenches shall be laid back to safe slopes or properly shored. Excavations and shoring operations shall be conducted in accordance with the most recent versions of the OSHA Construction Standards for Excavations, Part 1926, Subpart P and Wyoming Public Works Standard Specifications. Excavations for utilities shall be shored if the proper slope cannot be maintained.
- During earthwork phases of the project, a representative of Nelson Engineering shall be present to observe exposed native soils and fill materials for suitability and consistency. A documented testing program should be conducted to determine that soil compaction is in accordance with requirements.

WARRANTY AND LIMITING CONDITIONS

The field observations and research reported herein are considered sufficient in detail and scope to form a reasonable basis for the purposes cited above. Nelson Engineering warrants that the findings and conclusions contained herein have been promulgated in accordance with generally accepted professional engineering practice in the fields of foundation engineering, soil mechanics, and engineering geology, only for the site described in this report. No other warranties are implied or expressed.

These engineering methods have been developed to provide the client with information regarding apparent or potential engineering conditions relating to the subject property within the scope cited above and are limited to the conditions observed at the time of the site visit and research. There is a distinct possibility that conditions may exist which could not be identified within the scope of the investigation or which were not apparent during the site investigation. The report is also limited to the information available at the time it was prepared. In the event additional information is provided to Nelson Engineering following this report, it will be forwarded to the client in the form received for evaluation by the client. This report was prepared for use by Teton County Pathways in Teton County, Wyoming ("Client") and the conclusions and recommendations presented in this report are based on the agreed-upon scope of work outlined in the report and the contract for professional services between Client and Nelson Engineering ("Consultant"). Use or misuse of this report, or reliance upon the findings hereof by any parties other than the Client, is at their own risk. Neither the Client nor Consultant may make any representation of warranty to such other parties as to the accuracy or completeness of this report or the suitability of its use by such other parties for any purpose whatsoever, known or unknown, to the Client or Consultant. Neither Teton County Pathways nor Nelson Engineering shall have any liability to, or indemnifies or holds harmless third parties for any losses incurred, by the actual or purported use or misuse of this report. No other warranties are implied or expressed.

Philip Gyr, PE
Geotechnical Engineer

APPENDIX

TEST PIT LOGS

GEOTECHNICAL GENERAL NOTES

CORRECTED SPT: Standard Penetration Test values corrected to 60% of the theoretical free-fall hammer energy and for corrected for overburden pressure per AASHTO LRFD 6th ED Article 10.4.6.2.4.

DRILLING, SAMPLING, AND SOIL PROPERTIES ABBREVIATIONS AND SYMBOLS

- N:** Standard Penetration Test
- U_c:** Unconfined compressive strength, Pounds/ft² (PSF)
- Pp:** Pocket Penetrometer values, Ton/ft² (TSF)
- FILGC:** Fragments indicate gravels and cobbles larger than split spoon diameter.
- w:** Water content, %
- LL:** Liquid limit, %
- PI:** Plasticity index, %
- gd:** In-situ dry density, lbs/ft³ (PCF)
- : Ground water level
- SS:** Split-Spoon Sample
- ST:** Shelby Tube Sampler
- CS:** Cylindrical Brass Lined Sample



Monitoring Well, diagonal hatching indicates screen and sand packed interval

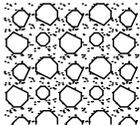
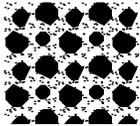
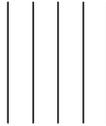
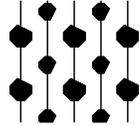
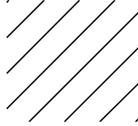
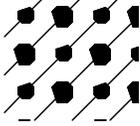
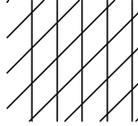
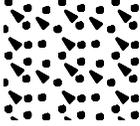
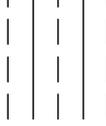
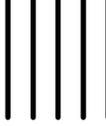
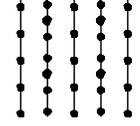
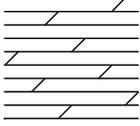
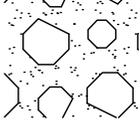
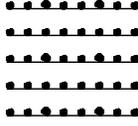
SOIL RELATIVE DENSITY AND CONSISTENCY CLASSIFICATION

Non-Cohesive Soils	Standard Penetration Resistance	Cohesive Soils	Pp-(tons/ft ²)
Very Loose	0 - 4	Very Soft	0 - 0.25
Loose	4 - 10	Soft	0.25 - 0.50
Slightly Compact	8 - 15	Firm (Medium)	0.50 - 1.00
Medium Dense	10 - 30	Stiff	1.00 - 2.00
Dense	30 - 50	Very Stiff	2.00 - 4.00
Very Dense	50+	Hard	4.00+

PARTICLE SIZE

Boulders: 12 in.+	Coarse Sand: 5 mm(#4)-2 mm(#10)	Silts and Clays: <#200
Cobbles: 12 in.-3in.	Medium Sand: 2 mm(#10)-0.4mm(#40)	
Gravel: 3in.-5mm(#4)	Fine Sand: 0.4mm(#40)-0.075mm(#200)	

SOIL GRAPHICS

<i>GW</i>		<i>SC</i>	
<i>GP</i>		<i>ML</i>	
<i>GM</i>		<i>CL</i>	
<i>GC</i>		<i>ML-CL</i>	
<i>SW</i>		<i>OL</i>	
<i>SP</i>		<i>MH</i>	
<i>SM</i>		<i>CH</i>	
<i>BEDROCK</i>		<i>OH</i>	
<i>COBBLES/BOULDERS</i>		<i>PT</i>	

NOTE: ANGLED DEMARCATIONS ON THE LOGS INDICATE APPROXIMATE OR POORLY DEFINED BOUNDARIES BETWEEN SOIL TYPES.

PROJECT NAME: PATH22 RETAINING WALLS DESIGN	TEST PIT No. 1	PAGE: 1
DATE STARTED / FINISHED: 3/27/2015	OPERATOR: FISH CREEK EXCAVATION	
LOGGED BY: PRUETT	EXCAVATOR TYPE: JD 50D	
BOREHOLE LOCATION/ELEVATION: SEE TEST PIT LOCATION MAP		

WELL LOG	GRAPHICS LOG	DEPTH (FT)	SAMPLES		SAMPLE ID	MATERIAL DESCRIPTION	LIQUID LIMIT	PLASTIC LIMIT	DRY DENSITY (PCF)	MOISTURE (%)	REMARKS
			UNDISTURBED	BULK							
		0				0'-2.0' MOIST BROWN SILT TOPSOIL WITH GRAVELS, MODERATE ROOTS THROUGHOUT, HETEROGENEOUS, PP=1.5-2.5 TSF, STIFF TO VERY STIFF, NO PINHOLE VOIDS					HWY 22 EMBANKMENT FILL SLOPE FOR ROAD CONSTRUCTION
		1			TP1-1 1'-2'						
		2				2.0'-5.0' MOIST LT BROWN SILT MATRIX WITH GRAVELS AND COBBLES UP TO 12" MAXIMUM DIMENSION, ANGULAR TO SUB-ANGULAR CLASTS, NO PINHOLE VOIDS IN MATRIX, HETEROGENEOUS, OCCASIONAL ERRATIC LENSES OF DK BROWN SILT, ~60% SILT, ~40% GRAVELS AND COBBLES					EASY TO MODERATE DIGGING FROM 0'-5'
		3									
		4				FROM 2.0'-4.0', PP>4.0 TSF, HARD					
		5				FROM 4.0'-5.0', PP=2.0-3.0 TSF, VERY STIFF					
		6			TP1-2 6'-7'	5.0'-BOP MOIST TO DRY BROWN/GRAY LEAN CLAY WITH GRAVELS AND COBBLES UP TO 12" MAXIMUM DIMENSION, ANGULAR TO SUB-ANGULAR CLASTS, ~20% GRAVELS AND COBBLES, ~80% CLAY, PP>4.0 TSF, HARD					MODERATE TO HARD DIGGING FROM 5'-BOP
		7									
		8									
		9				BOP=8.5'					
		10				NO GROUNDWATER ENCOUNTERED					
		11				NO CAVING					
		12									
		13									
		14									
		15									

NELSON ENGINEERING

P.O. BOX 1599, JACKSON WYOMING (307) 733-2087

CLIENT: **TETON COUNTY ENGINEERING DEPARTMENT TETON COUNTY, WYOMING**

JOB NO. **15-053-01**

PROJECT NAME: PATH22 RETAINING WALLS DESIGN	TEST PIT No. 2	PAGE: 1
DATE STARTED / FINISHED: 3/27/2015	OPERATOR: FISH CREEK EXCAVATION	
LOGGED BY: PRUETT	EXCAVATOR TYPE: JD 50D	
BOREHOLE LOCATION/ELEVATION: SEE TEST PIT LOCATION MAP		

WELL LOG	GRAPHICS LOG	DEPTH (FT)	SAMPLES		SAMPLE ID	This log is part of a report prepared by Nelson Engineering for this project and should be read with the report. This summary applies only at the location of the test pit and at the time of the excavation. Subsurface conditions may differ at other locations and may change at this location with passage of time. The data presented is a simplification of actual conditions encountered.	LIQUID LIMIT	PLASTIC LIMIT	DRY DENSITY (PCF)	MOISTURE (%)	REMARKS
			UNDISTURBED	BULK							
MATERIAL DESCRIPTION											
		0				0'-2.0' MOIST BROWN SILT TOPSOIL WITH OCCASIONAL GRAVELS, MINOR ROOTS THROUGHOUT, PP=3.0-4.0 TSF, VERY STIFF, NO PINHOLE VOIDS					HWY 22 EMBANKMENT FILL SLOPE FOR ROAD CONSTRUCTION
		1									EASY DIGGING FROM 0'-2'
		2				2.0'-5.75' ERRATIC LENSES OF MOIST TO DRY BROWN, DK BROWN, AND GRAY LEAN CLAY AND SILT WITH GRAVELS, ANGULAR TO SUB-ANGULAR GRAVELS, HETEROGENEOUS					MODERATE DIGGING FROM 2'-6.75'
		3				FROM 2.0'-4.75', PP>4.0 TSF, HARD, SOILS ARE DRY					
		4									
		5				FROM 4.75'-5.75', PP=2.5-3.5 TSF, VERY STIFF, SOILS ARE MOIST, NO PINHOLE VOIDS					
		6				5.75'-6.75' MOIST TO DRY BROWN SILT WITH GRAVEL, NO PINHOLE VOIDS, PP>4.0 TSF, HARD					
		7				6.75'-BOP MOIST TO WET DK BROWN SILTY CLAY WITH GRAVEL, PP=1-2 TSF, STIFF, NO PINHOLE VOIDS					EASY DIGGING FROM 6.75'-BOP
		8			TP2-1 7'-8'	BOP=8.0'					
		9				NO GROUNDWATER ENCOUNTERED NO CAVING					
		10									
		11									
		12									
		13									
		14									
		15									



P.O. BOX 1599, JACKSON WYOMING (307) 733-2087

CLIENT: **TETON COUNTY
ENGINEERING DEPARTMENT
TETON COUNTY, WYOMING**

JOB NO.
15-053-01

PROJECT NAME: PATH22 RETAINING WALLS DESIGN	TEST PIT No. 3	PAGE: 1
DATE STARTED / FINISHED: 3/27/2015	OPERATOR: FISH CREEK EXCAVATION	
LOGGED BY: PRUETT	EXCAVATOR TYPE: JD 50D	
BOREHOLE LOCATION/ELEVATION: SEE TEST PIT LOCATION MAP		

WELL LOG	GRAPHICS LOG	DEPTH (FT)	SAMPLES		SAMPLE ID	MATERIAL DESCRIPTION	LIQUID LIMIT	PLASTIC LIMIT	DRY DENSITY (PCF)	MOISTURE (%)	REMARKS
			UNDISTURBED	BULK							
		0				0'-1.5' MOIST BROWN SILT TOPSOIL WITH GRAVELS, MINOR ROOTS THROUGHOUT, PP=1.0-1.5 TSF, STIFF, NO PINHOLE VOIDS					HWY 22 AND FRONTAGE ROAD EMBANKMENT FILL SLOPE FOR ROAD CONSTRUCTION EASY DIGGING FROM 0'-3'
		1									
		2				1.5'-BOP ERRATIC LENSES OF MOIST TO DRY BROWN, DK BROWN, AND GRAY LEAN CLAY AND SILT WITH GRAVELS, COBBLES, AND BOULDERS UP TO 24" MAXIMUM DIMENSION, ANGULAR TO SUB-ANGULAR CLASTS, NO PINHOLE VOIDS, HETEROGENEOUS, ~20% GRAVELS, COBBLES, AND BOULDERS, ~80% CLAY AND SILT					
		3									
		4			TP3-1 3'-4'	FROM 1.5'-7.0', PP>4.0 TSF, HARD, SOILS ARE DRY					18" BOULDER FROM 3'-4' MODERATE DIGGING FROM 3'-7'
		5									
		6									
		7				FROM 7.0'-BOP, PP=1.5-2.5 TSF, STIFF TO VERY STIFF, SOILS ARE MOIST					24" BOULDER FROM 7'-8.5' EASY DIGGING FROM 7'-BOP
		8									
		9			TP3-2 8'-9'	SILT WITH SAND, USCS CLASSIFICATION - ML	26	22		23	
		10				BOP=10.0'					
		11				NO GROUNDWATER ENCOUNTERED NO CAVING					
		12									
		13									
		14									
		15									

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CLIENT: **TETON COUNTY ENGINEERING DEPARTMENT TETON COUNTY, WYOMING**

JOB NO. **15-053-01**

PROJECT NAME: PATH22 RETAINING WALLS DESIGN	TEST PIT No. 4	PAGE: 1
DATE STARTED / FINISHED: 3/27/2015	OPERATOR: FISH CREEK EXCAVATION	
LOGGED BY: PRUETT	EXCAVATOR TYPE: JD 50D	
BOREHOLE LOCATION/ELEVATION: SEE TEST PIT LOCATION MAP		

WELL LOG	GRAPHICS LOG	DEPTH (FT)	SAMPLES		SAMPLE ID	This log is part of a report prepared by Nelson Engineering for this project and should be read with the report. This summary applies only at the location of the test pit and at the time of the excavation. Subsurface conditions may differ at other locations and may change at this location with passage of time. The data presented is a simplification of actual conditions encountered.	LIQUID LIMIT	PLASTIC LIMIT	DRY DENSITY (PCF)	MOISTURE (%)	REMARKS
			UNDISTURBED	BULK							
		0				0'-1.5' MOIST BROWN SILT TOPSOIL, MINOR ROOTS THROUGHOUT, PP=1.0-2.0 TSF, STIFF, NO PINHOLE VOIDS					HWY 22 AND FRONTAGE ROAD EMBANKMENT FILL SLOPE FOR ROAD CONSTRUCTION EASY DIGGING FROM 0'-1.5'
		1				1.5'-BOP ERRATIC LENSES OF MOIST TO DRY BROWN, DK BROWN, AND GRAY LEAN CLAY, SILTY CLAY, AND SILT WITH GRAVELS, ANGULAR TO SUB-ANGULAR CLASTS, NO PINHOLE VOIDS, HETEROGENEOUS, ~10% GRAVELS, ~90% CLAY AND SILT					
		2				DEPENDING ON SOILS CONTENT, SILT PP=3.0-4.0 TSF, VERY STIFF, CLAY PP>4.0 TSF, HARD					MODERATE DIGGING FROM 1.5'-BOP
		3									
		4									
		4.5			TP4-1 4'-5'	SILTY CLAY, USCS CLASSIFICATION - CL-ML	29	22		27	
		5									
		6									
		7									
		8									
		8.5				BOP=8.5'					
		9				NO GROUNDWATER ENCOUNTERED NO CAVING					
		10									
		11									
		12									
		13									
		14									
		15									

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CLIENT: **TETON COUNTY ENGINEERING DEPARTMENT TETON COUNTY, WYOMING**

JOB NO. **15-053-01**

STANDARD FORMS

NOTICE OF AWARD

Date of Issuance:

Owner:

Owner's Contract No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated [_____] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ _____ *[note if subject to unit prices, or cost-plus]*

[] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [_____] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

Authorized Signature

By:

Title:

Copy: Engineer

NOTICE TO PROCEED

Owner: _____ Owner's Contract No.: _____
Contractor: _____ Contractor's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Project: _____ Contract Name: _____
Effective Date of Contract: _____

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [_____, 20__]. *[see Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is _____] *or* [the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:
[Note any access limitations, security procedures, or other restrictions]

Owner:

Authorized Signature

By:

Title:

Date Issued:

Copy: Engineer

Work Change Directive No.

Date of Issuance: _____ Effective Date: _____
 Owner: _____ Owner's Contract No.: _____
 Contractor: _____ Contractor's Project No.: _____
 Engineer: _____ Engineer's Project No.: _____
 Project: _____ Contract Name: _____

Contractor is directed to proceed promptly with the following change(s):

Description:

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

- Non-agreement on pricing of proposed change.
- Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price \$ _____ [increase] [decrease].
 Contract Time _____ days [increase] [decrease].

Basis of estimated change in Contract Price:

- Lump Sum Unit Price
- Cost of the Work Other

RECOMMENDED:

AUTHORIZED BY:

RECEIVED:

By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
 Title: _____

Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.:

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: _____
Engineer (if required)

By: _____
Owner (Authorized Signature)

By: _____
Contractor (Authorized Signature)

Title: _____

Title: _____

Title: _____

Date: _____

Date: _____

Date: _____

Approved by Funding Agency (if applicable)

By: _____
Title: _____

Date: _____

