

SPECIFICATIONS AND CONTRACT DOCUMENTS

**Blue Springs  
Road  
BRIDGE  
Renovation**

Washington County, Arkansas

April 1, 2018

# SPECIFICATIONS AND CONTRACT DOCUMENTS

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### TECHNICAL SPECIFICATIONS (Incorporated by Reference\*)

Standard Specifications for Highway Construction published by the Arkansas Department of Transportation (ArDOT)

\* All materials and construction shall comply with the latest edition of the Standard Specifications for Highway Construction published by the Arkansas Department of Transportation (ArDOT), which is incorporated by reference. For additional requirements, see also the design plans prepared by Washington County Road Department.

## ADVERTISEMENT FOR BIDS

Notice is hereby given that, pursuant to an order of the County Judge of Washington County, Arkansas, sealed bids will be received at the Washington County Purchasing Office on the fifth floor of the Washington County Courthouse until 4:00pm, April 27, 2018 for furnishing all tools, materials and labor, and performing the necessary work for construction of the Blue Springs Road Bridge. All contractors / responding bidders shall attend the pre-bid meeting held at the Courthouse 5<sup>th</sup> floor conference room, 280 N College Ave, Ste 500, Fayetteville AR 72701, on April 19, 2018 at 9:00am. Monday April 30, 2018 at 9:00am the bids received will be publicly opened and read aloud. The work generally consists of:

Renovation of the Blue Springs Road Bridge includes the furnishing and installing of H Piles and Sheet Piles

Bidding Documents and Plans can be obtained by contacting Washington County Purchasing at [purchasing@co.washington.ar.us](mailto:purchasing@co.washington.ar.us). These documents are available electronically, in .pdf format at no fee, at <https://www.co.washington.ar.us/government/departments-f-z/purchasing/bids-proposals>. Printed copies of these documents can also be obtained from the Purchasing Office. Documents can also be reviewed at the office of the Washington County Road Department, Fayetteville, Arkansas.

The contractors shall make such inspection and studies of the site of the work as to familiarize themselves with all conditions to be encountered.

Each bid must be accompanied by an acceptable form of bid guaranty in the amount equal to at least five percent of the whole bid, and such bid bond or cashier's check shall be subject to the conditions provided in the Instructions to Bidders.

All bids shall be sealed and the envelopes addressed to Washington County Purchasing, 280 N. College Ave, Ste 530, Fayetteville, Arkansas 72701. All bids shall be plainly marked on the outside of the envelope specifying that it is Bid 2018-02 Blue Springs Road Bridge Renovations, the time for opening of bids, and the name and current contractor's license number of the bidder.

All bidders must be licensed under the terms of Act 150, Arkansas Acts of 1965, as amended.

Attention is called to the fact that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for overtime work as determined by the Arkansas Department of Labor shall be paid, as required by state law.

Pursuant to Arkansas Code Annotated 22-9-203, the Owner encourages all qualified small, minority, and women business enterprises to bid on and receive contracts for goods, services and construction. The Owner also encourages all general contractors to subcontract portions of their contract to qualified small, minority, and women business

enterprises.

The County reserves the right to reject any and all bids and to waive any informalities in the proposal deemed to be in the best interests of the County. The County further reserves the right to withhold the awarding of the contract for a period not to exceed 60 days after the bid opening.

*/s/ Joseph Wood, Washington County Judge*

## INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS. Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007) have the meanings assigned to them in the General Conditions. Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1 "Bidder" means one who submits a Bid directly to Owner, as distinguished from a sub-bidder, who submits a bid to a Bidder.

1.2 "Issuing Office" means the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

1.3 "Successful Bidder" means the lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

1.4 "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, and the proposed Specifications and Contract Documents (including all Addenda issued prior to receipt of Bids).

## 2. COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents in the number and for the amount, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Engineer upon request.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS. Bidders shall have minimum five years of experience with bridge construction or similar projects. To demonstrate qualifications to perform the Work, each Bidder must submit with his Bid the following Statement of Bidder's Qualifications. Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the Work contemplated therein.

### STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate

Instructions  
to Bidders

attached sheets. The Bidder may submit any additional information he desires.

- 1) Name of Bidder.
- 2) Permanent main office address.
- 3) When organized.
- 4) If a corporation, where incorporated.
- 5) List state contractor licenses.
- 6) How many years have you been engaged in the contracting business under your present firm or trade name?
- 7) Contracts on hand. (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- 8) General character of work performed by your company.
- 9) Have you ever failed to complete any work awarded to you?
- 10) Have you ever defaulted on a contract? If so, where and why?
- 11) List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed.
- 12) List your major equipment available for this contract.
- 13) Experience in construction similar in size to this project, along with project owners and engineers. Include similar projects to illustrate minimum five years of experience.
- 14) Background and experience of the principal members of your organization, including the officers.
- 15) Credit available: \$ \_\_\_\_\_
- 16) Give bank reference: \_\_\_\_\_
- 17) Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?  Yes  No

Dated at \_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

Name of Organization: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

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

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

\_\_\_\_\_ being duly sworn deposes and says  
that he (she) is the \_\_\_\_\_ of  
\_\_\_\_\_, Contractor(s), and that answers to  
the foregoing questions and all statements therein contained are true and correct.

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

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.  
(Seal)

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.1 It is the responsibility of each Bidder before submitting a Bid:

- 4.1.1 to examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);
- 4.1.2 to visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;
- 4.1.3 to consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
- 4.1.4 to study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data;
- 4.1.5 to promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2 Reference is made to the Supplementary Conditions for identification of:

4.2.1 those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such

## Instructions to Bidders

reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2 those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph SC-4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.3 Information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.4 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 Contract Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03 and 4.04 of the General Conditions.

4.5 Before submitting a Bid, each Bidder will, at Bidder's own expense, be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6 On request in advance, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. 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.

4.7 Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by Owner or others (such as

utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such work.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated or expressly required by the Contract Documents, the Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

4.9 The provisions of 4.01 through 4.06, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by paragraph 4.06 of the General Conditions.

5. AVAILABILITY OF LANDS FOR WORK, ETC. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

## 6. INTERPRETATIONS AND ADDENDA

6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to Road Superintendent in writing to the email address of Alisha Willett ,purchasing@co.washington.ar.us. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties registered as a plan holder by Engineer. Questions received less than seven calendar days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

## 7. BID SECURITY

7.1 Each Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of the Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of paragraph 5.02 and SC-5.02A of the General Conditions.

7.2 The Bid security of the Successful Bidder will be retained until such Bidder has

## Instructions to Bidders

executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the 61st day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.

8. CONTRACT TIMES. The numbers of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Times" is defined in paragraph 1.01.A.14 of the General Conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

9. LIQUIDATED DAMAGES. Provisions for liquidated damages, if any, are set forth in the Agreement.

10. SUBSTITUTE OR "OR-EQUAL" ITEMS. The contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of materials or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in paragraph 6.05 of the General Conditions and may be supplemented in the General Requirements.

11. SUBCONTRACTORS, SUPPLIERS AND OTHERS. The Contractor shall not assign or sublet all or any part of this Contract without the prior written approval of the Owner nor shall the Contractor allow such Subcontractor to commence Work until he has provided such workers' compensation and public liability insurance as may be required. The approval of each subcontract by the Owner will in no manner release the Contractor from any of his obligations as set out in the Plans, Specifications, Contract and Bonds.

## 12. BID FORM

12.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the issuing office).

12.2 All blanks on the Bid Form must be completed in ink or by typewriter.

12.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

12.5 All names must be typed or printed below the signature.

12.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12.7 The address and telephone number for communications regarding the Bid must be shown.

12.8 Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with paragraph 3 above. State contractor license number must also be shown.

13. SUBMISSION OF BIDS. Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security, and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

14. MODIFICATION AND WITHDRAWAL OF BIDS

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

14.2 If, within 24 hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. OPENING OF BIDS. Bids will be opened and (unless obviously nonresponsive) read aloud publicly at the place where Bids are to be submitted. A tabulation of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after preparation by the Engineer.

16. BIDS TO REMAIN SUBJECT TO ACCEPTANCE. All bids will remain subject to acceptance for 60 days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. AWARD OF CONTRACT

17.1 Owner reserves the right to reject any and all Bids, including without limitation the

## Instructions to Bidders

rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies in 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. Discrepancies between words and figures will be resolved in favor of the words.

17.2 In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

17.3 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

17.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5 If the contract is to be awarded, it will be awarded to the lowest responsive, responsible Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.

17.6 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid opening.

17.7 If at any time this contract is to be awarded, the total bid submitted by a responsible Bidder exceeds the funds then estimated by the Owner as available, the Owner may reject all bids.

18. CONTRACT SECURITY. Paragraph 5.01 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to Performance and Payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds.

19. SIGNING OF AGREEMENT. When Owner gives Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within 15 days thereafter Contractor shall sign and deliver the required number of

counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. COMPLIANCE WITH STATE LICENSING LAW. Contractors must be licensed in accordance with the requirements of Act 150, Arkansas Acts of 1965, the "Arkansas State Licensing Law for Contractors." Bidders who submit Bids in excess of \$20,000 must submit evidence of their having a contractor's license before their bids will be considered, and shall note their license number on the outside of their Bid.

21. LABOR LAWS. The Contractor shall abide by all federal, state and local laws governing labor. The Contractor further agrees to save the Owner harmless from the payment of any contribution under the State Unemployment Compensation Act, and the Contractor agrees that if he is subject to the Arkansas State Unemployment Act, he will make whatever contributions are required under and by virtue of the provisions of said Act.

22. WAGES AND LABOR. Minimum wage rates shall be equal to basic rates as established by common usage in the city and adjacent community for the various types of labor and skills performed. In case wage rates are specified in the Contract Documents, the rates as specified shall be the minimum rates which apply to the Project. Whenever available, local common labor shall be used and whenever practical, skilled and semi-skilled labor, if available, shall be used.

The Contractor and each Subcontractor, where the contract amount exceeds \$75,000, shall comply with the provisions of Act 74, as amended by Act 275 of 1969 (Ark. Stat. 14-630). The provisions are summarized below.

The Contractor and Subcontractor shall:

- 1) pay the minimum prevailing wage rates for each craft or type of workman and the prevailing wage rate for holiday and overtime work, as determined by the Arkansas Department of Labor.
- 2) post the scale of wages in a prominent and easily accessible place at the site of the Work.
- 3) keep an accurate record showing the names and occupation and hours worked of all workmen employed by them, and the actual wages paid to each of the workmen, which record shall be open at all reasonable hours to the inspection of the Department of Labor or the Owner, its officers and agents.

The Owner shall have the right to withhold from amounts due the Contractor so much of accrued payments as may be considered necessary to pay the workmen employed by the Contractor or any Subcontractor, the difference between the rates of wages required by this Contract and the rates of wages received by such workmen.

If it is found that any workmen employed by the Contractor or a Subcontractor has been or is being paid a rate of wages less than the rate of wages required by this Contract, the Owner may by written notice to the Contractor, terminate his right to proceed with the Work or such party of the Work as to which there has been a failure to pay the required

wages and to prosecute the Work to completion by Contract or otherwise, and the Contractor and his sureties shall be liable for any excess costs occasioned thereby.

23. COMPLIANCE WITH ACT 125, ARKANSAS ACTS OF 1965. The attention of all Bidders is called to the provisions of Act 125, Arkansas Acts of 1965. This act provides for payment for certain taxes on materials and equipment brought into the state. It further provides for methods of collecting said taxes. All provisions of this Act will be complied with under this Contract.

24. WITHHOLDING STATE INCOME TAXES. The Contractor shall deduct and withhold Arkansas income taxes, as required by Arkansas law, from wages paid to employees, whether such employees are residents or nonresidents of Arkansas.

25. COMPLIANCE WITH RULES AND REGULATIONS FOR THE ENFORCEMENT AND ADMINISTRATION OF ACT 162, ARKANSAS ACTS OF 1987. The attention of all NON-RESIDENT BIDDERS is called to the provision of Act 162, Arkansas Acts of 1987. This act provides for non-resident contractors and subcontractors notice and bond regulations by the Commissioner of Revenues, Department of Finance and Administration, Post Office Box 1272, Little Rock, Arkansas 72203 prior to commencing work or undertaking to perform any duties under any contract within the State of Arkansas.

26. COMPLIANCE WITH ARKANSAS CODE ANNOTATED 22-9-203. Pursuant to Arkansas Code Annotated 22-9-203, the Owner encourages all qualified small, minority, and women business enterprises to bid on and receive contracts for goods, services, and construction. The Owner also encourages all general contractors to subcontract portions of their contract to qualified small, minority, and women business enterprises.

27. COMPLIANCE WITH ARKANSAS CODE ANNOTATED 22-9-204. Contractors shall comply with Arkansas Code Annotated 22-9-204, and all subcontractors referenced in this section and listed by the Contractor in the Bid Form shall be licensed by the State

**B I D**

**BLUE SPRINGS ROAD BRIDGE RENOVATION**

Washington County, Arkansas

March 16, 2018

County Judge Joseph Wood  
Washington County  
280 N. College Avenue  
Fayetteville, Arkansas 72701

To Judge Wood:

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the day of Bid opening. Bidder will sign and submit the Contract Agreement with the Bonds and other documents required by the bidding requirements within fifteen days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Contract Agreement, that:
  - a) Bidder has examined copies of all the Bidding Documents and of the following addenda (receipt of which is hereby acknowledged)

Date

Number

---

---

---

and such addenda are attached to the Bid.

- b) Bidder has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- c) Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- d) Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions. Bidder accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions. Bidder acknowledges that such reports and drawings are not Contract Documents and may not be complete for Bidder's purposes. Bidder acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder and safety precautions and programs incident thereto. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.
- e) Bidder is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- f) Bidder has correlated the information known to Bidder, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- g) Bidder has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Bidder has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.

h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

4. The following documents are attached to and made a condition of this Bid. Required Bid Security in the form of bid bond or certified or cashier's check for \_\_\_\_\_ (\$\_\_\_\_\_).

5. The Bidder will complete the Work for the following unit and lump sum prices:

Item No.	Description	Unit Amount	Unit Price	Total
1.	Furnish and Install 8" H Piles	480 LF	\$_____	\$_____
2.	_____	_____	\$_____	\$_____
	Optional 1: H Pile Description			
3.	_____	_____	\$_____	\$_____
	Optional 2: H Pile Description			
4.	Furnish and Install K Wall Sheet Piles	2,640 LF	\$_____	\$_____
5.	_____	_____	\$_____	\$_____
	Optional 1: K Wall Sheet Pile Description			
6.	_____	_____	\$_____	\$_____
	Optional 2: K Wall Sheet Pile Description			

**See Addendum 1**

TOTAL BID with Vendor Providing Bridge Completion \$\_\_\_\_\_

TOTAL BID with County Providing Bridge Completion \$\_\_\_\_\_

5. Final measurement shall be determined as per ARDot specifications. The contract, if awarded, will be based on the lowest responsive bid accepted by Washington County, Arkansas.

Unit prices have been computed in accordance with paragraph 11.03 of the General Conditions.

Bidder acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.

Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words, unless obviously incorrect, will govern.

The above unit and lump sum prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

6. The Bidder agrees that the Work will be substantially complete within 90 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 90 calendar days after the date when the Contract Times commence to run.

Bidder accepts the provisions of the Contract Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

7. Communications concerning this Bid shall be addressed to the address of Bidder indicated below.
8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.
9. Proposed Subcontractors. List any proposed subcontractors with cost of work exceeding \$20,000.

<u>Work to be Performed</u>	<u>Subcontractor AR License Number</u>	<u>Percent of Total Bid</u>	<u>Subcontractor's Name &amp; Address</u>
1. _____	_____	_____	_____ _____
2. _____	_____	_____	_____ _____
3. _____	_____	_____	_____ _____

Note: Attach additional sheets if required.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_  
(Firm Name)

By \_\_\_\_\_

Attest: \_\_\_\_\_  
(Seal, if bid is by corporation.)

Title \_\_\_\_\_

Arkansas License No. \_\_\_\_\_

\_\_\_\_\_  
(Business Address & Zip Code)

## **AGREEMENT**

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

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### Article 1.     WORK

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

Blue Springs Road Bridge Renovation, which consists of all items of work as set out in the Bid and these Specifications and Plans, for the unit and lump sum prices bid in the Bid, including all work required for a complete installation.

### Article 2.     ENGINEER

The Specifications and Contract Documents, with the exception of the Drawings and Technical Specifications, have been prepared by Washington County Road Department , who is hereinafter called Engineer and who is 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 completion of the Work in accordance with the Contract Documents.

### Article 3.     CONTRACT TIMES

3.1 The Work will be substantially completed and placed in service within Ninety (90) days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within One Hundred Twenty (120) days after the date when the Contract Times commence to run. These Contract Times include delays for normal (average) weather-related events, such as rain, snow, and freezing temperatures which may affect the progress of the construction in the following amounts on a per-month basis as hereinafter set out. Only weather-related delays in excess of these amounts will be considered for time extensions, if requested by the Contractor.

Days Included in Contract Times for Normal Weather Days  
(On A Monthly Basis)

January	11
February	10
March	8
April	7
May	8
June	8
July	6
August	5
September	6
October	5
November	6
December	8

The Contractor shall include within the Contract Times the respective number of days (as shown above for each month during the Contract) for normal weather-related events which may cause delays in the progress of the Work, and place a sufficient work force on the project to ensure completion of the Work within the Contract Times.

3.2 Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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) Contractor shall pay Owner One Hundred dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner One Hundred dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds for the performance of the Contract in accordance

with the accepted Bid therefor, subject to additions and deductions, as provided in the Specifications, for unit and lump sum prices in the Bid, the total sum being

\_\_\_\_\_ (\$ \_\_\_\_\_).  
 (use words) (figures)

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer as provided in paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

#### Article 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 Progress Payments; Retainage. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer. The date for payment shall be defined as the third Friday of each month, except in months containing five Fridays. In that event, the payment date shall be the fourth Friday of the month during construction as provided in paragraph 5.1.1 below. All such payments will be measured by the schedule of values established in paragraph 2.05 of 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 in the General Requirements.

5.1.1 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 Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.

95% of Work completed (with the balance being retainage).

100% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

#### Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

6.1 Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7 and the other related data identified in the Bidding Documents including "technical data."

6.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

6.3 Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

6.4 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions. Contractor accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which Contractor is entitled to rely as provided in paragraph 4.02 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5 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.

6.6 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of the following:

- 7.1 This Agreement.
- 7.2 Exhibits to this Agreement.
- 7.3 Performance, Payment and other Bonds.

- 7.4 Notice to Proceed.
- 7.5 General Conditions.
- 7.6 Supplementary Conditions.
- 7.7 Specifications consisting of divisions and sections as listed in the Table of Contents, including the "Standard Specifications for Highway Construction" published by the Arkansas Department of Transportation (ARDOT) (Incorporated by Reference).
- 7.8 Drawings prepared by Washington County Road Department
- 7.9 Addenda numbers to , inclusive.
- 7.10 Contractor's bid.
- 7.11 Documentation submitted by Contractor prior to Notice of Award.
- 7.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

#### Article 8. MISCELLANEOUS

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2 The Contractor and all Subcontractors shall pay not less than the minimum prevailing hourly wage rates as found by the Arkansas Department of Labor or as determined by the Court on appeal to all workmen performing work under the Contract.

8.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

8.5 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed, initialed or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

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

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

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

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

[Corporate Seal]

[Corporate Seal]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for Giving Notices

Address for Giving Notices

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

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

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_  
\_\_\_\_\_ a (2) \_\_\_\_\_ hereinafter  
called "Principal" and (3) \_\_\_\_\_  
of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called  
the "Surety," are held and firmly bound unto (4) \_\_\_\_\_  
\_\_\_\_\_, hereinafter called the "Owner," in the penal sum of

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

Blue Springs Road Bridge Renovations, Washington County, Arkansas

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms and conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

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

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

This bond is given in compliance with Act 351, Arkansas Acts of 1953, and Act 209, Arkansas Acts of 1957, the same appearing as Arkansas Statutes (1957), Section 51-635, Cumulative Supplement.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed as original, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attest:

\_\_\_\_\_  
(Principal) Secretary  
(Seal)

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Attest:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety

By \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

NOTE: Date of bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, a partnership, or an individual, as the case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is a partnership, all partners should execute bond.
- (6) This bond must be filed with the Circuit Clerk of the county where the work is to be performed prior to the start of construction.

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we (1) \_\_\_\_\_  
\_\_\_\_\_ a (2) \_\_\_\_\_ hereinafter  
called "Principal" and (3) \_\_\_\_\_  
of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called  
the "Surety," are held and firmly bound unto (4) \_\_\_\_\_  
\_\_\_\_\_, hereinafter called the "Owner," in the penal sum of  
\_\_\_\_\_

dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of  
which sum well and truly to be made, we bind ourselves, our heirs, executors,  
administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal  
entered into a certain contract with Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction  
of:

Blue Springs Road Bridge Renovations, Washington County, Arkansas

NOW THEREFORE, if the Principal shall promptly make payment to all persons,  
firms, subcontractors and corporations furnishing materials for or performing labor in the  
prosecution of the work provided for in such contract, and any authorized extension or  
modification thereof, all amounts due for but not limited to, materials, lubricants, oil,  
gasoline, coal and coke, repair on machinery, equipment and tools, consumed or used in  
connection with the construction of said work, fuel oil, camp equipment, food for men, feed  
for animals, premium for bonds and liability and workmen's compensation insurance,  
rentals on machinery, equipment and draft animals; also for taxes or payments due the  
State of Arkansas or any political subdivision thereof which shall have arisen on account of  
or in connection with the wages earned by workmen covered by the bond; and for all labor,  
performed in such work whether by subcontractor or otherwise, then this obligation shall be  
void, otherwise to remain in full force and effect.

The Surety agrees the terms of this bond shall cover the payment by the Principal of  
not less than the prevailing hourly rate of wages as found by the Arkansas Department of  
Labor or as determined by the court on appeal to all workmen performing work under the  
contract.

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

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

This bond is given in compliance with Act 351, Arkansas Acts of 1953, and Act 209, Arkansas Acts of 1957, the same appearing as Arkansas Statutes (1957), Section 51-635, Cumulative Supplement.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed as original, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attest:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary  
(Seal)

By \_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Attest:

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Surety) Secretary

By \_\_\_\_\_

(Seal)

Attorney-in-Fact

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

NOTE: Date of bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, a partnership, or an individual, as the case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is a partnership, all partners should execute bond.
- (6) This bond must be filed with the Circuit Clerk of the county where the work is to be performed prior to the start of construction.

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.1 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
  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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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 at the Site.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.2 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).
- 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. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- 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**

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

- A. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### *2.2 Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### *2.3 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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

## 2.4 *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 the date on which the Contract Times commence to run.

## 2.5 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.6 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

## 2.7 *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 2.05.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 component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.1 *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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.2 *Reference Standards***

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, 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 Contract Documents. 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 Contract Documents.

#### **3.3 *Reporting and Resolving Discrepancies***

- A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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).

3.4 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.5 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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
2. 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.

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.

### 3.6 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.1 *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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- 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 the Work is to be performed 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.

#### 4.2 *Subsurface and Physical Conditions*

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

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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.

#### 4.3 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed 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 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; 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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and
  - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.4 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for 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 such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price

or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.5 *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.

#### 4.6 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by

Paragraph 6.16.A); and (iii) 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 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 5 – BONDS AND INSURANCE**

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

- A. Contractor shall furnish performance and payment bonds, 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 Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, 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 requirements of Paragraphs 5.01.B and 5.02.

### *5.2 Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### *5.3 Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.4 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  - 5. 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; and
  - 6. 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.
- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and 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;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.5 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

#### 5.6 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

## 5.7 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies 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 of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.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, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.8 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.9 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### 6.1 *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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- 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.

### 6.2 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

### 6.3 *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.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, 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.

## 6.4 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

## 6.5 *Substitutes and "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 specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion 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, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, 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; and
      - 3) it has a proven record of performance and availability of responsive service.
    - 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.

## 2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. 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:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) 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
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

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

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or

other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. 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 any right of Owner or Engineer to reject defective Work.

- C. 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. 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. 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.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

## 6.7 *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.

## 6.8 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

## 6.9 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 *Taxes*

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

#### 6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. 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 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 by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 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 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 property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. 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, 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 owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.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 (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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *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.

#### 6.15 *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.

#### 6.16 *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.

#### 6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*
    - a. Submit number of copies specified in the General Requirements.
    - 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 6.17.D.
  2. *Samples:*
    - a. Submit number of Samples specified in the Specifications.
    - b. 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 6.17.D.
- B. 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. *Submittal Procedures:*
1. Before submitting each Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated each 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 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 and approval of that 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 both a written communication separate from the Shop

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

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

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.

6.18 *Continuing the Work*

- A. 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, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 representation of 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 or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. 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 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 6.20.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 6.20.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.

#### 6.21 *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 law.
- 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, Shop Drawings 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 6.21, 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 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.1 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
  2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

### 7.2 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.3 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

### 8.1 *Communications to Contractor*

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

### 8.2 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.3 *Furnish Data*

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

### 8.4 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### 8.5 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### 8.6 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 8.7 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.8 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.9 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

9.1 *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 Documents.

9.2 *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 9.09. 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.

### 9.3 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.4 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.5 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

### 9.6 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

- B. In connection with 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, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.7 *Determinations for Unit Price Work*

- A. 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 Paragraph 10.05.

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.9 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### 10.1 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.2 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

### 10.3 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  2. 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; and
  3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

### 10.4 *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.

### 10.5 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.1 *Cost of the Work***

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs 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 11.01.B, 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, 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 11.01.
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 5.06.D), 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

B. *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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which 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 Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.

- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, 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.

## 11.2 *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:*

- 1. Contractor agrees that:

- a. 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
    - b. 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:*

- 1. 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.

## 11.3 *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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that Contractor 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 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### **12.1 *Change of Contract Price***

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- 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 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.2 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## 12.3 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.1 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.2 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests 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.

### *13.3 Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.

- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. 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.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### 13.4 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.5 *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, 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.

### 13.6 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. 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 removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.7 *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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 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 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. 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) will be paid by Contractor.

- 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 13.07, 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 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### 13.8 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

### 13.9 *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 in accordance with Paragraph 13.06.A, 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, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### *14.1 Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

### *14.2 Progress Payments*

#### *A. 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 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.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. 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;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.
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 14.02.C.1 and subject to interest as provided in the Agreement.

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

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.4 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities

pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. 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 tentative list.

#### 14.5 *Partial Utilization*

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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

#### 14.6 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

## 14.7 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

### 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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. 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 14.09. 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. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

#### 14.8 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.9 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

#### 15.1 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.2 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. 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
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

### 15.3 *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;
  3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

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

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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 15.03.
- 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 – DISPUTE RESOLUTION

### 16.1 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.1 *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 to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.2 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents 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.

### 17.3 *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 Documents. 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.

### 17.4 *Survival of Obligations*

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

### 17.5 *Controlling Law*

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

### 17.6 *Headings*

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

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## **SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

### **SC-1 DEFINITIONS AND TERMINOLOGY**

In addition to the provisions of Article 1, the following respective supplemental definitions apply:

The word "Owner" shall mean Washington County, acting through its duly authorized representatives.

The word "Engineer" shall mean the Washington County Road Department, Carl D. Gales, P.E.

The words "Resident Project Representative" shall mean the authorized representative of the Engineer who is assigned to the site or any part thereof.

The word "surety" or "sureties" shall mean the bondsmen or party or parties who have made sure the fulfillments of the Contract by Bonds, and whose signatures are attached to said Bonds.

The word "Advertisement" shall mean all the legal publications pertaining to the Work of this Contract.

The word "Plans" shall mean, collectively, all of the Drawings pertaining to the Contract and made a part thereof, and also such Supplementary Drawings as the Engineer may issue from time to time in order to clarify the Drawings, or for the purpose of showing changes in the Work as authorized under the section "Modifications and Alterations," or for showing details which are not shown thereon.

The term "grade" used in these Specifications is understood to refer to and indicate the established elevations of the paving, flow line of sewers or other appurtenances as shown on the Plans on file in the office of the official designated in the "Advertisement for Bids."

The term "bonds" means bid, performance, and payment bonds and other instruments of surety.

Whenever the following abbreviations are used, they shall have the meanings given below:

## Supplementary Conditions

AASHTO	-	American Society of State Highway Officials
ACI	-	American Concrete Institute
AGA	-	American Gas Association
AISC	-	American Institute of Steel Construction
ANSI	-	American National Standards Institute
APA	-	American Plywood Association ASA
	-	American Standards Association ASTM
	-	American Society for
Testing Materials AWG	-	American Wire Gauge
AWPA	-	American Wood Products Association
AWS	-	American Welding Society AWWA
	-	American Water Works Association
GSA	-	General Services Administration, U. S. Government
NBHA	-	National Builders Hardware Association
NEC	-	National Electrical Code
NEMA	-	National Electrical Manufacturers Association
NFPA	-	National Fire Protection Association
NPT	-	National Pipe Thread
SBC	-	Standard Building Code SPA
	-	Southern Products Association
UL	-	Underwriters' Laboratories
A	-	ampere
ABC	-	aggregate base course
cfm	-	cubic feet per minute
CGMP	-	corrugated galvanized metal pipe
DIP	-	ductile iron pipe
gpm	-	gallons per minute
Hp	-	horsepower
MGD	-	million gallons per day
N.C.	-	normally closed
N.O.	-	normally open
ppm	-	parts per million
psi	-	pounds per square inch
PVC	-	polyvinyl chloride (pipe)
R	-	motor starter relay
RCP	-	reinforced concrete pipe
rpm	-	revolutions per minute
T.D.	-	time delay
TDH	-	total dynamic head
V	-	volt

### SC-2 PRELIMINARY MATTERS

Add the following language at the end of paragraph 2.02.A of the General Conditions:

SC-2.02.B Copies of Contract. Not less than four copies of the bound volumes of the proposal, Contract and stipulations shall be prepared, each containing the Bid, the Bond or Bonds properly executed and Contracts signed by both parties thereto. However, the Contractor and the surety executing the Bond shall not date the Contract or the Bond upon submission for execution by the Owner. These

documents will be dated the date the Owner executes the Contract.

SC-4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

SC-4.02 Subsurface and Physical Conditions. Add the following new paragraphs immediately after Paragraph 4.02.B of the General Conditions:

- C. The following report of explorations and tests of Subsurface Conditions at or contiguous to the site are known to Owner:
  - 1. Report prepared in 2017 by GTS, Inc. of Fayetteville, Arkansas, entitled: "Geotechnical Engineering Report; Blue Springs Road Bridge Washington County, Arkansas."
- D. The following Drawings of Physical Conditions relating to existing surface or subsurface structures at the site (except underground facilities) are known to Owner:
- E. The Reports and Drawings identified above are not part of the Contract Documents, but the "Technical Data" contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.
- F. Copies of Reports and Drawings identified in SC-4.02.A that are not included with the Bidding Documents may be examined at the Washington County Road Department office during regular business hours. Copies of Reports and Drawings identified in SC-4.02.A that are not included with the Bidding Documents shall be transmitted to Contractor upon written request by Contractor to Washington County Road Department .

SC-4.06 Hazardous Environmental Condition at the Site. Delete paragraphs 4.06.A and 4.06.B of the General Conditions in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not used.

Delete paragraph 4.06.G in its entirety.

Add the following new paragraphs immediately after paragraph 4.06.I.

- J. In no way do the provisions of Section 4.06 imply responsibility for the protection of the environment, unless otherwise required by Laws and Regulations.

## Supplementary Conditions

- K. Substances which may be defined as “hazardous” but do not meet the definition of “hazardous waste” as defined in Section 1.01, including but not limited to chlorine gas or other chemicals, which are openly used by the Owner on a consistent basis as a part of their normal operating procedures, are not required to be disclosed by the Owner to the Contractor in reports, drawings, or Contract Documents. Contractor takes full responsibility for all of Contractor’s actions that result in damages to persons, property, or equipment as a result of a releases/spills of substances described in this paragraph.

### SC-5 BONDS AND INSURANCE

Add a new paragraph immediately after paragraph 5.01.B of the General Conditions which is to read as follows:

SC-5.01.B.1 Resident Agent. The Contractor shall furnish bid, performance and payment bonds and other instruments of surety, as provided for in Article 5 of the General Conditions, executed by a resident or non-resident agent licensed by the Arkansas State Insurance Commissioner to represent the surety company executing said bonds, and filing with such bonds his power-of-attorney. The mere countersigning of the bonds by a resident or non-resident agent will not be sufficient.

SC-5.02.A Licensed Sureties and Insurers. Add the following sentences at the end of the existing paragraph 5.02.A of the General Conditions:

The surety on the bond shall be from a corporate surety company duly authorized to do business in the State of Arkansas. Bonds must be written by an 'A' rated bonding company.

SC-5.03 Certificates of Insurance. Delete paragraph 5.03.B of the General Conditions in its entirety.

### SC-5.04 Contractor’s Liability Insurance

Add the following paragraphs immediately after the respective paragraphs contained in SC-5.04 of the General Conditions:

SC-5.04 The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

SC-5.04.A.1 and SC-5.04.A.2 Workers’ Compensation and Related Coverages under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

- |    |   |                 |
|----|---|-----------------|
| 1) | State:                                    | Statutory       |
| 2) | Applicable Federal (e.g. Longshoreman's): | Statutory       |
| 3) | Employer’s Liability: \$ 500,000          | Each Occurrence |

Policies shall include the following waiver documented on certificates:

Contractor agrees to waive all rights of subrogation against the Owner for Work performed under Contract.

SC-5.04.A.3 through SC-5.04.A.6 Contractor's General Liability (under paragraphs 5.4.A.3 through A.6 of the General Conditions) shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- |  |             |
|--|-------------|
| 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 & Property Damage)   | \$1,000,000 |
| 5) Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable. |             |

Policies will include premises/operations, products, completed operations, independent contractors, Explosion, Collapse, Underground Hazard, Broad Form Contractual, Personal Injury with employment exclusion deleted, and Broad Form Property Damage.

SC-5.04.A.6 Automobile Liability under paragraph 5.04.A.6 of the General Conditions:

Bodily Injury:	
Each Person	\$1,500,000
Each Accident	\$3,000,000
Property Damage:	
Each Accident	\$ 600,000
OR a Combined Single Limit of	\$2,000,000

SC-5.05 Owner's Liability Insurance. Delete paragraph 5.05 of the General Conditions in its entirety and insert the following in its place:

5.05 Owner's and Engineer's Contingent Protective Liability Insurance. The Contractor shall indemnify and save harmless the Owner and Engineer from and against all losses and claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against them by reason of any omission or act of the Contractor, his agent or employees in the execution of the Work or in the guarding of it. The Contractor shall obtain in the name of the Owner and Engineer (either as co-insured or by endorsement), and shall maintain and pay the premiums for such insurance in an amount not less than \$2,000,000 for property damage and bodily injury limits, and with such provisions as will protect the Owner and Engineer from contingent liability under this Contract.

SC-5.06.A Property Insurance. Delete paragraph 5.06.A of the General Conditions in its entirety and insert the following in its place:

## Supplementary Conditions

- A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof, but not less than an amount equal to the Total Bid Price. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:
1. include the interests of the Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and 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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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 these Supplementary Conditions;
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup;
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and
  8. comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.06.B Other Insurance. Delete paragraph 5.06.B of the General Conditions in its entirety and insert the following in its place:

5.6.B.1 Other Insurance. The Contractor is to protect the Owner against all loss during the course of the Contract. If, due to the nature of the Project, insurance coverage other than that specified is needed by the Contractor to protect the Owner against all losses, the Contractor is responsible for determining the type of insurance needed and purchasing same.

SC-5.06.B Add the following immediately after paragraph 5.06.B:

"Will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives" wording will be deleted from certificates.

Policies shall also specify that insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the Owner or the Engineer.

5.6.B.2 Blasting. If the Contractor is performing blasting on the Project, the following requirements shall be met:

1. The blasting contractor shall submit a certificate issued by an insurance company authorized to do business in the State of Arkansas certifying that the applicant has a public liability insurance policy in force for the blasting operation for this particular project. Such policy shall provide for personal injury and property damage protection with a minimum limit of Five (5) Million Dollars. Insurance shall cover blasting with XCU coverage on a per-occurrence basis. Certificate shall name the Project Owner, General Contractor and Project Engineer as Additional Insured for said Project.
2. The policy shall be maintained in full force during the life of the Project.
3. The policy shall include a rider requiring that the insurer notify the Owner whenever substantive changes are made in the policy including any termination or failure to renew.

SC-5.06.E Delete paragraph 5.06.E of the General Conditions in its entirety.

SC-5.08 Receipt and Application of Insurance Proceeds. Delete section 5.08 of the General Conditions in its entirety.

SC-5.09 Acceptance of Bonds and Insurance. Delete section 5.09 of the General Conditions in its entirety.

## SC-6 CONTRACTOR'S RESPONSIBILITIES

SC-6.06 Add a new paragraph immediately after paragraph 6.06.G:

- H. 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 a particular Subcontractor or Supplier.

SC-6.07 Patent Fees and Royalties. Delete paragraph 6.07B in its entirety.

SC-6.08.A Permits. Add the following language at the end of the existing paragraph 6.08.A of the General Conditions:

The Owner shall obtain a Permit for Discharge of Stormwater from Construction Activities as required by the Arkansas Department of Environmental Quality, as well as an NPDES Discharge permit if required by Laws and Regulations. The responsibility for complying with all applicable regulations shall be borne by the Contractor.

SC-6.09 Laws and Regulations. Add a new paragraph immediately after paragraph 6.09.B of the General Conditions which shall read as follows:

The Contractor shall prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances resulting from construction

## Supplementary Conditions

activities. No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers, and reasonable measures will be taken to prevent such materials from entering any drain or watercourse.

SC-6.17      Shop Drawings and Samples. Add the following language at the end of the first sentence of paragraph 6.17.A of the General Conditions:

The Shop Drawing Review by the Engineer is for general compliance with the Contract Documents. No responsibility is assumed by the Engineer for correctness of dimensions or details.

### SC-7 OTHER WORK AT THE SITE

SC-7.04      Separate Contractor Claim. Add a new paragraph 7.04 immediately after paragraph 7.03 of the General Conditions which shall read as follows:

SC-7.04      Separate Contractor Claim.

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either 1) remedy the damage, 2) agree to compensate the other contractor for remedy of the damage, or 3) remedy the damage and attempt to settle with such other contractor by agreement or otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be

Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

## SC-8 OWNER'S RESPONSIBILITIES

SC-8.06 Delete paragraph 8.06 of the General Conditions in its entirety.

## SC-9 ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03 Add the following language at the end of paragraph 9.03.A of the General Conditions:

### SC-9.03.B Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

#### General

The Resident Project Representative (RPR), who is the Engineer's agent, will act as directed by and under the supervision of the Engineer and will confer with the Engineer regarding its actions. The Resident Project Representative's dealings in matters pertaining to the on-site Work shall, in general, be only with the Engineer and the Contractor, and dealings with subcontractors shall only be through or with the full knowledge of the Contractor. Written communication with the Owner will be only through or as directed by the Engineer.

#### Duties and Responsibilities of RPR

- 1) Schedules. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
- 2) Conferences and Meetings. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 3) Liaison.
  - a) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - b) Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 4) Shop Drawings and Samples.
  - a) Record date of receipt of Shop Drawings and samples.
  - b) Receive samples which are furnished at the site by Contractor, and notify Engineer of availability of samples for examination.

## Supplementary Conditions

c) Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by Engineer.

### 5) Review of Work, Rejection of Defective Work, Inspections and Tests.

a) Conduct on-site observations of the Work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

b) Report to Engineer whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

c) Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to Engineer appropriate details relative to the test procedures and startups.

d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.

6) Interpretation of Contract Documents. Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

7) Modifications. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Engineer. Transmit to Contractor decisions as issued by Engineer.

### 8) Records.

a) Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

b) Keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

c) Record names, addresses and telephone numbers of all contractors, subcontractors and major suppliers of materials and equipment.

### 9) Reports.

a) Furnish Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.

b) Consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.

c) Draft proposed Change Orders and Work Directive Changes, obtaining backup

material from Contractor and recommend to Engineer Change Orders, Work Directive Changes, and Field Orders.

d) Report immediately to Engineer and Owner upon the occurrence of any accident.

10) Payment Requests. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11) Certificates, Maintenance and Operation Manuals. During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to Owner prior to final payment for the Work.

12) Completion.

a) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

b) Conduct final inspection in the company of Engineer, Owner and Contractor and prepare a final list of items to be completed or corrected.

c) Observe that all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.

Limitations of Authority (except upon written instruction of the Engineer).

Resident Project Representative:

- . shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
- . shall not exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
- . shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.
- . shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- . shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- . shall not accept Shop Drawing or sample submittals from anyone other than Contractor.
- . shall not authorize Owner to occupy the Project in whole or in part.

## Supplementary Conditions

shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Engineer.

### SC-11 COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-11.03.D Unit Price Work. Delete paragraph 11.03.D of the General Conditions and add the following in its place:

- D. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
1. if the Bid price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and
  2. if there is no corresponding adjustment with respect to any other item of Work; and
  3. if Contractor believes that Contractor has incurred additional expense as a result thereof or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

### SC-12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC-12.01.C Contractor's Fee. Add the following paragraph 12.01.C.2.g:

- g. The maximum fee for overhead and profit when multiple tiers of subcontractors are involved is 27 percent, based on a maximum of three (3) tiers ( $1.15 \times 1.05 \times 1.05 = 1.27$ ).

### SC-14 PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.C.1 Payment Becomes Due. Delete paragraph 14.02.C.1 and replace with the following:

1. After presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due and be paid by Owner to Contractor within a reasonable amount of time consistent with standard business practices and the requirements of any governing agencies, if applicable.

SC-14.02.D Reduction in Payment. Delete paragraph 14.02.D.3 in its entirety.

## SECTION 01110 – SUMMARY OF WORK

### PART 1 - GENERAL

#### 1.1 SUMMARY

- A. This Section summarizes the Work covered in detail in the complete Contract.
- B. Owner: Washington County, 280 N. College Avenue, Fayetteville, Arkansas 72701,
- C. Engineer: The design and Plans were prepared by Washington County Road Department.

#### 1.2 PROJECT DESCRIPTION

- A. The work generally consists of renovation of Blue Springs Road Bridge Renovation, including the furnishing and installing H piles and Sheet Piling and all items set out in the Drawings and Specifications for a complete installation.

#### 1.3 CONTRACTOR'S COORDINATION WITH THE UTILITY

- A. Limited Use:
  - 1. The Contractor shall confine disturbance and work to the construction areas shown on the Drawings.
  - 2. Coordinate with Owner to avoid interference of operations.
  - 3. Conduct operations so as to ensure the least inconvenience to Owner and the general public.

#### 1.4 LANDS AND RIGHTS OF WAY

- A. The work to be performed under this contract shall be on rights of way owned by Washington County and across "waters of the U.S."

#### 1.5 WORK SEQUENCE

- A. After the contract, bonds, and certificates of insurance have been furnished to the Owner, and the contract has been executed, the Engineer will issue a Notice to Proceed designating the date the contract time will commence. The Contractor shall complete the contract within the Contract Times set out in the Agreement.
- B. The Contractor will cooperate in all respects with Washington County and personnel during the construction of the new facilities.

## 1.6 CONTRACTOR TO FURNISH EQUIPMENT, MATERIALS AND MANPOWER

- A. The Contractor shall furnish, without charge, competent men from his force and such tools, stakes and other materials as the Engineer may require for setting horizontal and vertical control monuments and in making measurements and surveys and in establishing temporary or permanent reference marks in connection with said work.

## 1.7 TEMPORARY FACILITIES

- A. During the performance of this contract, the Contractor shall at his expense maintain a temporary office. This office shall be complete with communication, electric power, water and sanitation facilities.
  - 1. Water: All water required for and in connection with the work to be performed and for any specified tests for inundation or settling of backfill material, or for any other use as may be required for proper completion of the work shall be provided by and at the expense of the Contractor, unless otherwise specified. No separate payment for water used or required will be made and all costs in connection therewith shall be included in the Bid. .
  - 2. Electric Power: The Contractor shall provide all power for heating, lighting, operation of Contractor's equipment, or for any other use by Contractor. Temporary heat and lighting shall be maintained until the work is accepted. No separate payment for electric power used or required will be made and all costs in connection therewith shall be included in the Bid.
  - 3. Sanitary Facilities: The Contractor shall furnish temporary facilities at the site, as provided herein, for the needs of all construction workers, Resident Project Representative, and others performing work or furnishing services on the project in accordance with federal and state laws governing sanitary facilities.

## 1.8 SCHEDULE OF VALUES

- A. The Contractor shall develop the Schedule of Values as required by Section 2.07 of the General Conditions and submit for approval. This Schedule shall be submitted and approved prior to the first payment estimate being processed.

## 1.9 TREE AND PLANT PROTECTION

- A. All trees and other vegetation which must be removed to perform the work shall be removed and disposed of by Contractor. However, care shall be taken in yard areas not to remove trees or cultured plants unless specifically called for on the Plans. Trees and plants not removed shall be protected from direct injury from Contractor operations.
- B. Trimming and repair of tree and plant damage shall be performed by qualified nursery workers or horticulturists.

## 1.10 SUNDAY, HOLIDAY AND NIGHT WORK

- A. No work shall be done between the hours of 6:00 p.m. and 7:00 a.m., or on Sundays or legal holidays, except work as is necessary for the proper care and protection of work already performed, or in case of any emergency.

#### 1.11 USE OF EXPLOSIVES

- A. Not allowed unless otherwise approved by Engineer, Owner, and local authority having jurisdiction.

#### 1.12 SECURITY

- A. The Contractor shall be responsible for protection of the site, and all Contractor's work, materials, equipment and existing facilities thereon against vandals and other unauthorized persons.
- B. No claim shall be made against the Owner by reason of any act of an employee or trespasser, and the Contractor shall make good all damage to Owner's property resulting from his failure to provide security.
- C. Security measures shall be at least equal to those usually provided by Owner to protect his existing facilities during normal operation, but shall also include such additional security fencing, barricades, lighting, watchman services, and other measures as required to protect the site.

#### 1.13 STORAGE AND HANDLING OF MATERIALS

- A. The Contractor shall be responsible for all material furnished by him and shall replace at his own expense all such material found defective in manufacture or damaged in handling after delivery by the manufacturer. This shall include the furnishing of all material and labor required for the replacement of installed material discovered prior to the final acceptance of the work.
- B. The Contractor shall be responsible for the safe storage of material furnished by or to him and accepted by him, and intended for the work, until the Notice of Final Completion. All materials shall be stored in strict conformance to the manufacturer's recommendations.

#### 1.14 ACCESS ROADS

- A. The Contractor shall establish and maintain temporary access roads to various parts of the site as required to complete the project. Scheduling, materials and construction procedures are specified in other sections of the documents. Such roads shall be available for the use of all performing work or furnishing services in connection with the project.
- B. Any temporary access roads constructed by the Contractor shall be removed and the surface restored to original or better condition prior to final payment.

#### 1.15 PARKING

- A. The Contractor shall provide and maintain suitable parking areas for the use of all construction workers and others performing work or furnishing services in connection with the project, as necessary, to avoid any need for parking personal vehicles where they may interfere with construction activities.

1.16 POLLUTION CONTROL

- A. The Contractor shall prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris and other substances resulting from construction activities. Reasonable measures shall be taken to prevent sediment and debris from entering any drain or watercourse.

1.17 MONTHLY ESTIMATES AND PAYMENT TO CONTRACTOR

- A. Monthly payments under this contract shall be made for work completed through the payment date. The payment date shall be defined as the fourth Friday of each month, except in months containing five Fridays. In that event, the payment date shall be the fourth Friday of the month. A pay period shall be defined as time between consecutive payment dates. Exceptions may be made for special circumstances upon mutual agreement between the Owner and the Contractor.
- B. On or before the payment date of each month the Engineer will make an approximate estimate of the value of the work done and materials furnished in place on the work during the previous calendar month. The Engineer will include the cost value (including freight) of materials properly stored on the job site or within a thirty-mile radius of the job site.
- C. The Contractor shall furnish to the Engineer such detailed information as he may request to aid him as a guide in the preparation of monthly estimates. After each such estimate shall have been approved by the Owner, the Owner shall pay to the Contractor the amount of such estimated value of materials furnished and work done during said previous calendar month, less retainage as provided by state law. If the Owner shall at any time fail to make the Contractor a monthly estimate at the time herein specified, such failure shall not be held to vitiate or void the contract.

1.18 BASIS OF PAYMENT

- A. Payment shall be made in accordance with the bid items as set out in Section 01125 "Methods of Measurement and Payment."

1.19 CONNECTIONS TO EXISTING FACILITIES

- A. NOT APPLICABLE

1.20 TESTING

- A. The Contractor shall be responsible for and shall pay all costs associated with any inspection or testing required in connection with Owner's or Engineer's acceptance of materials or equipment incorporated in the work, as provided for in Article 13 of the General Conditions.
- B. The Contractor shall be responsible for furnishing to the Engineer materials and equipment manufacturers' duly sworn certificates of compliance with all requirements and provisions of applicable standards such as, but not limited to, AWWA, ASTM, ANSI, AASHTO, AHTD, or others for all materials and equipment delivered to this project.
- C. Specific requirements for testing and certificates of compliance are set forth in the Technical Specifications for each item of work.

## 1.21 PROTECTING AND REPLACING UTILITY SERVICES

- A. Arkansas One Call: Contractor shall abide by all provisions of Arkansas State Law, Chapter 271, "Arkansas Underground Facilities Damage Prevention Act," and any subsequent amendments to Chapter 271. Contractor shall be responsible for all white-lining of proposed excavation routes and for all notifications to Arkansas One Call Center for all locates needed prior to any excavation or demolition, in accordance with all provisions of Chapter 271. The Owner will not be liable for any damages, consequential or incidental, which may occur as a result of Contractor failing to abide by all the provisions of Chapter 271. Contractor shall be solely liable for any and all damages caused by Contractor, Contractor's subcontractors and/or Contractor's assigns to any utility systems.
- B. Where the Contractor cannot make adequate repairs to any utility damaged by the Contractor, the Contractor shall coordinate with the various utility companies to make repairs to all services, and such costs will be charged to the Contractor. The Contractor shall make arrangements for this service with the various utilities either before the bid is presented or before construction starts.

## 1.22 ABBREVIATIONS AND SYMBOLS

- A. Abbreviations and symbols used in these Specifications are described in the Supplementary Conditions, Article SC-1.

## 1.23 CLEANUP

- A. During construction, the Contractor shall keep the construction area in a clean, neat and workmanlike condition at all times.
- B. Pipe, equipment, and all other material shall be stored and protected in an area away from the construction operations. As soon as practicable, the area around all structures shall be backfilled, and the entire area shall be maintained in a smooth condition at all times insofar as is practical.
- C. After construction work has been completed, the Contractor shall clean the entire area. Contractor shall stabilize the site in accordance with permit requirements.

## 1.24 CRITICAL PATH SCHEDULE

- A. The Contractor shall show various phases of work to be performed, submittals, materials and equipment orders, receipt of materials and equipment, manpower, skills, and equipment required, and completion dates of various phases of work to be performed for completion of the project.
- B. The Contractor shall submit an approvable critical path schedule at least ten days before submission of the first application for payment.
- C. Prior to preparation of the monthly partial payment estimate, the Contractor shall submit to the Engineer critical path progress status reports and revised schedules as required to show completion of the project within the agreed contract time set forth in the Contract Agreement.

1.25 SAFETY SYSTEMS

- A. Act 291 of the 1993 Arkansas General Assembly requires that whenever any agency of the state, county, municipality, or school district, or other local taxing unit or improvement district enters into a contract for public works improvements which involves any trench or excavation which equals or exceeds five (5) feet in depth, include in their specifications for the project the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P. This document is hereby incorporated into these Specifications by reference.

1.26 PERMITS

- A. The Owner will obtain a Section 404 Permit from the U.S. Army Corps of Engineers and a Short Term Activity Authorization Permit from the Arkansas Department of Environmental Quality (ADEQ.) Contractor shall be responsible for complying with all requirements of the permits and shall reimburse the Owner in full for all fines associated with non-compliance.

1.27 STORAGE OF EXCAVATED MATERIAL

- A. Location of stored excavated material shall comply with permit requirements. Contractor shall coordinate location with Owner prior to construction.

1.28 SIGNAGE AND TRAFFIC CONTROL

- A. Contractor shall prepare and submit a signage and traffic control plan complying with ARDOT requirements to the Owner for review and approval prior to construction.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 01110

## SECTION 01125 – METHODS OF MEASUREMENT AND PAYMENT

### PART 1 - GENERAL

#### 1.1 SUMMARY

- A. Methods of measurement and payment as set out in the Specifications covering the various items of construction are hereby clarified and superseded as set out herein. Wherever they are not clarified or superseded herein, methods of payment as provided in the applicable section of the Specifications shall govern. Payment for all work under this contract shall be made at the unit and lump sum prices bid under the various items of the Bid as hereinafter set out.
  - 1. Bid Items 1 and 2 – Renovation of Blue Springs Road Bridge. Payment for construction shall be made in accordance with the unit price bid. Measurement shall be based upon the units furnished and installed as agreed between the County Road Department and the Contractor. Price includes furnishing all materials, labor, equipment, and other related appurtenances necessary for construction in accordance with regulatory permits, implementation and maintenance of sediment control measures and other best management practices identified by Owner, and other items as detailed in the Drawings and specifications for a complete installation .

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 01125

## SECTION 01310 - PROJECT MANAGEMENT AND COORDINATION

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. This Section includes administrative provisions for coordinating construction operations on Project including, but not limited to, the following:
  1. Project meetings.
  2. Requests for Interpretation (RFIs).

#### 1.3 DEFINITIONS

- A. RFI: Request from Contractor seeking interpretation or clarification of the Contract Documents.

#### 1.4 COORDINATION

- A. Coordination: Coordinate construction operations included in different Sections of the Specifications to ensure efficient and orderly installation of each part of the Work. Coordinate construction operations, included in different Sections, that depend on each other for proper installation, connection, and operation. In addition, work associated with instrumentation and controls will be provided by a separate contractor under a direct contract with the Owner. Contractor shall coordinate all work with the instrumentation and controls contractor.
  1. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
  2. Coordinate installation of different components with other contractors to ensure maximum accessibility for required maintenance, service, and repair.
  3. Make adequate provisions to accommodate items scheduled for later installation.
  4. Where availability of space is limited, coordinate installation of different components to ensure maximum performance and accessibility for required maintenance, service, and repair of all components, including mechanical and electrical.
- B. Contractor shall prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices and reports.
  1. Prepare similar memoranda for Owner and separate contractors if coordination of their Work is required.
- C. Administrative Procedures: Contractor shall coordinate scheduling and timing of required administrative procedures with other construction activities and activities of other contractors to

avoid conflicts and to ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:

1. Preparation of Contractor's Construction Schedule.
2. Preparation of the Schedule of Values.
3. Installation and removal of temporary facilities and controls.
4. Delivery and processing of submittals.
5. Startup and adjustment of systems.

## 1.5 SUBMITTALS

- A. Key Personnel Names: Within 10 days of the acceptance of the bid, Contractor shall submit a list of key personnel assignments. Identify individuals and their duties and responsibilities; list addresses and telephone numbers, including home and office telephone numbers. Provide names, addresses, and telephone numbers of individuals assigned as standbys in the absence of individuals assigned to Project.
  1. Post copies of list in the Contractor's and Engineer's temporary field offices, and by each temporary telephone. Keep list current at all times.

## 1.6 PROJECT MEETINGS

- A. General: Engineer shall schedule and conduct meetings and conferences at Project site, unless otherwise indicated. Engineer shall prepare and distribute agenda and minutes.
- B. Preconstruction Conference: Engineer shall schedule a preconstruction conference before starting construction, at a time convenient to Owner, but no later than 30 days after execution of the Agreement.
  1. Attendees: Authorized representatives of Owner, Engineer, and their consultants; Contractor and its superintendent; major subcontractors; suppliers; and other concerned parties shall attend the conference. All participants at the conference shall be familiar with Project and authorized to conclude matters relating to the Work.
  2. Agenda: Discuss items of significance that could affect progress, including the following:
    - a. Construction schedule.
    - b. Phasing (if applicable).
    - c. Critical work sequencing and long-lead items.
    - d. Designation of key personnel and their duties.
    - e. Procedures for processing field decisions and Change Orders.
    - f. Procedures for RFIs.
    - g. Procedures for testing and inspecting.
    - h. Procedures for processing Applications for Payment.
    - i. Distribution of the Contract Documents.
    - j. Submittal procedures.
    - k. Preparation of Record Documents.
    - l. Use of the premises.
    - m. Work restrictions.
    - n. Owner's occupancy requirements.
    - o. Responsibility for temporary facilities and controls.
    - p. Construction waste management.
    - q. Parking availability.

- r. Office, work, and storage areas.
  - s. Equipment deliveries and priorities.
  - t. Security (construction site and wastewater treatment plant).
  - u. Progress cleaning.
  - v. Working hours.
  - w. Coordination with Owner-provided equipment and services.
3. Minutes: Engineer will record and distribute meeting minutes.

## 1.7 REQUESTS FOR INTERPRETATION (RFIs)

- A. Procedure: Immediately on discovery of the need for interpretation of the Contract Documents, and if not possible to request interpretation at Project meeting, prepare and submit an RFI in the form specified.
- 1. RFIs shall originate with Contractor. RFIs submitted by entities other than Contractor will be returned with no response.
  - 2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors.
- B. Content of the RFI: Include a detailed, legible description of item needing interpretation and the following:
- 1. Project name.
  - 2. Date.
  - 3. Name of Contractor.
  - 4. Name of Engineer.
  - 5. RFI number, numbered sequentially.
  - 6. Specification Section number and title and related paragraphs, as appropriate.
  - 7. Drawing number and detail references, as appropriate.
  - 8. Field dimensions and conditions, as appropriate.
  - 9. Contractor's suggested solution(s). If Contractor's solution(s) impact the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
  - 10. Contractor's signature.
  - 11. Attachments: Include drawings, descriptions, measurements, photos, Product Data, Shop Drawings, and other information necessary to fully describe items needing interpretation.
    - a. Supplementary drawings prepared by Contractor shall include dimensions, thicknesses, structural grid references, and details of affected materials, assemblies, and attachments.
- C. Software-Generated RFIs: Software-generated form with substantially the same content as indicated above.
- 1. Attachments shall be electronic files in Adobe Acrobat PDF format.
- D. Engineer's Action: Engineer will review each RFI, determine action required, and return it. Allow seven (7) working days from date received by Engineer for Engineer's response for each RFI.
- 1. The following RFIs will be returned without action:
    - a. Requests for approval of submittals.
    - b. Requests for approval of substitutions.
    - c. Requests for coordination information already indicated in the Contract Documents.
    - d. Requests for adjustments in the Contract Time or the Contract Sum.

- e. Requests for interpretation of Engineer's actions on submittals.
  - f. Incomplete RFIs or RFIs with numerous errors.
2. Engineer's action may include a request for additional information, in which case Engineer's time for response will start again.
- E. On receipt of Engineer's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify Engineer within seven (7) days if Contractor disagrees with response.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 01310

## SECTION 01330 – SUBMITTALS

### PART 1 - GENERAL

#### 1.1 SUMMARY

- A. This Section includes procedure, instructions, requirements and additional information about informational and technical Submittals.

#### 1.2 GENERAL INFORMATION

##### A. Definitions:

1. Shop Drawings, product data, and Samples are parts of the Technical Submittals prepared by the Contractor, Subcontractor, manufacturer, or Supplier and submitted by the Contractor to the Engineer as a basis for approval of the use of Equipment and Materials proposed for incorporation in the Work or needed to describe installation, operation, maintenance, or technical properties.
  - a. Shop Drawings include custom-prepared data of all types including drawings, diagrams, performance curves, material schedules, templates, instructions, and similar information not in standard printed form applicable to other projects.
  - b. Product data includes standard printed information on materials, products, and systems; not custom-prepared for this Project, other than the designation of selections from available choices.
  - c. Samples include both fabricated and unfabricated physical examples of materials, products, and Work; both as complete units and as smaller portions of units of Work; either for limited visual inspection or (where indicated) for more detailed testing and analysis. Mock-ups are a special form of Samples which are too large to be handled in the specified manner for transmittal of Sample Submittals.
2. Informational Submittals are those technical reports, administrative Submittals, certificates, and guarantees not defined as Shop Drawings, product data, or Samples.
  - a. Technical reports include laboratory reports, tests, technical procedures, technical records, and Contractor's design analysis.
  - b. Administrative Submittals are those nontechnical Submittals required by the Contract Documents or deemed necessary for administrative records. These Submittals include maintenance agreements, Bonds, Project photographs, physical work records, statements of applicability, copies of industry standards, Project record data, security/protection/safety data, and similar type Submittals.
  - c. Certificates and guarantees are those Submittals on Equipment and Materials where a written certificate or guarantee from the manufacturer or Supplier is called for in the Specifications.
3. Refer to Articles 1.3 and 1.4 of this Part for detailed lists of documents and specific requirements.

##### B. Quality Requirements:

1. Submittals such as Shop Drawings and product data shall be of suitable quality for legibility and reproduction purposes. Every line, character, and letter shall be clearly legible. Drawings such as reproducibles shall be useable for further reproduction to yield a legible hard copy.

2. Documents submitted to Engineer that do not conform to specified requirements shall be subject to rejection. Contractor shall resubmit conforming documents. If conforming Submittals cannot be obtained, such documents shall be retraced, redrawn, or photographically restored as may be necessary to meet such requirements. Contractor's (or his Subcontractor's) failure to initially satisfy the legibility quality requirements will not relieve Contractor (or his Subcontractors) from meeting the required schedule for Submittals.

C. Language and Dimensions:

1. All words and dimensional units shall be in the English language.
2. Metric dimensional unit equivalents may be stated in addition to the English units. However, English units of measurement shall prevail.

D. Submittal Completeness:

1. Submittals shall be complete with respect to dimensions, design criteria, materials of construction, and other information specified to enable Engineer to review the information effectively.
2. Where standard drawings are furnished which cover a number of variations of the general class of Equipment, each drawing shall be annotated to indicate exactly which parts of the drawing apply to the Equipment being furnished. Use hatch marks to indicate variations that do not apply to the Submittal. The use of "highlighting markers" will not be an acceptable means of annotating Submittals. Annotation shall also include proper identification of the Submittal permanently attached to the drawing.
3. Reproductions or copies of Contract Drawings or portions thereof will not be accepted as complete fabrication or erection drawings. Contractor may use a reproduction of Contract Drawings for erection drawings to indicate information on erection or to identify detail drawing references. Whenever the Drawings are revised to show this additional Contractor information, Engineer's title block shall be replaced with a Contractor's title block, and Engineer's professional seal shall be removed from the drawing. The Contractor shall revise these erection drawings for subsequent Engineer revisions to the Contract Drawings.

### 1.3 TECHNICAL SUBMITTALS

A. Items shall include, but not be limited to, the following:

1. Reference information shall include:
  - a. Specification Section name and number.
  - b. Structure number, identification number or other information identifying location of item submitted.
2. Manufacturer's technical specification.
3. Catalogs, or parts thereof, of manufactured Equipment.
4. Shop drawings detailing fabrication.
5. Data sheets showing model numbers.
6. General outline drawings of Equipment showing:
  - a. Overall dimensions in plan and elevation views.
  - b. Location of major components.
  - c. Material and weights of major components, including overall weight to be supported by structure.
  - d. Location(s) of required building opening(s) and floor plate(s).
7. Detailed Equipment installation drawings with suggested installation sequence showing:

- a. Dimensions in plan, elevation and section views.
  - b. Foundation details.
  - c. Anchor bolt size(s) and location(s).
  - d. Baseplate size(s).
  - e. Alignment and adjustment procedures.
  - f. Location, size, material and type of all connections to be made with item submitted.
  - g. Clearances required for:
    - 1) Erection
    - 2) Operation
    - 3) Disassembly for maintenance.
8. Electrical data including:
- a. Schematic diagrams for electrical items.
  - b. Motor size and description.
  - c. External connections with required loads.
  - d. Terminal block numbers.
  - e. Internal wiring diagrams.
  - f. One-line diagrams.
  - g. Control wiring diagrams.
9. Delivery and storage recommendations. Specific recommendations for equipment not to be immediately installed.
10. Recommended spare parts list specifically denoting long delivery items and all items convenient for stocking as optional replacement items.
11. Instruction, Operation and Maintenance Manual.
12. Detailed list of any exceptions taken to the requirements of the Technical Specification. Include proposed alternative with reason stated for exception.
13. Certification that the submitted material describes exactly the equipment to be provided. Substitutions of equipment subsequent to submittal approval will not be accepted.
- B. Instruction, Operation and Maintenance Manual: Equipment instruction books, operation and maintenance manuals prepared by the manufacturer shall include the following prepared specifically for this project rather than general instructions that are not designed for this project. Manuals shall be in addition to any instructions or parts lists packed with or attached to the equipment when delivered, or which may be required by the Contractor. Manuals shall include but not be limited to the following:
- 1. Equipment performance sheets.
  - 2. Performance data including equipment function, normal operating characteristics, and limiting conditions.
  - 3. Performance tests on equipment by manufacturers.
  - 4. Descriptive literature including cut sheet for all equipment items purchased from sub-vendors.
  - 5. Operating instructions including procedures for:
    - a. Startup.
    - b. Routine and normal operation and maintenance.
      - 1) Lubrication procedures with recommended grades of lubricants (if required).
    - c. Regulation and control.
    - d. Trouble shooting.
    - e. Replacing improperly functioning components subjected to wear.
    - f. Normal and emergency shutdown.
  - 6. Parts list, including predicted life of parts subjected to wear.

7. All drawings, catalogs or parts thereof, manufacturer's specifications and data, samples, instructions, and other information specified or necessary:
  - a. For Engineer to determine that the Equipment and Materials conform with the design concept and comply with the intent of the Contract Documents.
  - b. For the proper erection, installation, operation, and maintenance of the Equipment and Materials which Engineer will review for general content but not for basic details.
  - c. For Engineer to determine what supports, anchorages, structural details, connections, and services are required for the Equipment and Materials, and the effects on contiguous or related structures and Equipment and Materials.
8. Warranties and guarantees.
9. Customer contact list with a minimum of 10 contacts from similar sized installations.
10. Contact name and telephone number for each installation
11. Address and contact information of nearest manufacturer-authorized service facility.
12. Information listed above shall be bound into hard-back three-ring binders of Bok-Hinge Split Prong Binder or McBee Swing Hinge type. Manuals shall be temporarily bound in heavy paper covers bearing suitable identification.
  - a. A table of contents and index shall be furnished for all volumes containing data for three or more items of equipment.
  - b. Sheet size shall be 8-1/2 x 11 inches with standard three hole punching. All material shall be printed on heavy, first quality (minimum 20 pound) paper. Drawings and diagrams shall be reduced to 8-1/2 x 11 inches or 11 x 17 inches.
    - 1) Where reduction of drawings and figures is not practicable, larger drawings shall be folded separately and placed in envelopes, which are bound into the manuals. Each envelope shall bear suitable identification on the outside.
  - c. Binder color shall be black. Material shall be organized with tabs for ease of use. Capacity shall be a minimum of 1-1/2-inches, but sufficient to contain and use sheets with ease.
    - 1) Provide with following accessories:
      - a) Label holder.
      - b) Business card holder.
      - c) Sheetlifters.
      - d) Horizontal pockets.
    - 2) The following information shall be imprinted, inserted or affixed by label on the binder front cover:
      - a) Equipment name.
      - b) Manufacturer's name.
      - c) Project name.
      - d) Contract name and number.
    - 3) The following information shall be imprinted, inserted, or affixed by label on the binder spine:
      - a) Equipment name.
      - b) Manufacturer's name.
      - c) Volume number (if applicable).
13. In addition to hard copies of instruction, operation, and maintenance manuals, digital copies, in PDF format, consisting of instruction, operation, and maintenance manuals as described above, shall be furnished.

C. Samples:

1. Office Samples shall be of sufficient size and quantity to clearly illustrate the following:

- a. Functional characteristics of the product, with integrally related parts and attachment devices.
  - b. Full range of color, texture, and pattern.
2. Field Samples and Mock-ups:
- a. Contractor shall erect field Samples and mock-ups at the Project Site and at a location acceptable to Engineer.
  - b. Size or area shall be as specified in the respective Specification Section.
  - c. Fabricate each Sample and mock-up complete and finished.
  - d. Remove mock-ups at conclusion of Work or when acceptable to the Engineer if not a permanent part of construction.

D. Schedule of Submittals:

- 1. Prepare for Engineer's concurrence, a schedule for submission of all Submittals specified or necessary for Engineer's approval of the use of Equipment and Materials proposed for incorporation in the Work or needed for proper installation, operation, or maintenance. Submit the schedule with the procurement schedule and construction progress schedule. Schedule submission of all Submittals to permit review, fabrication, and delivery in time so as to not cause a delay in the Work of Contractor or his Subcontractors or any other contractors as described herein.
- 2. In establishing schedule for Submittals, allow 22 days after submittal to Engineer for reviewing original Submittals and 17 days after submittal to Engineer for reviewing resubmittals.
- 3. The schedule shall indicate the anticipated dates of original submission for each item and Engineer's approval thereof, and shall be based upon at least one resubmission of each item.
- 4. Schedule all Submittals required prior to fabrication or manufacture for submission within 90 days of the Notice to Proceed. Schedule Submittals pertaining to storage, installation, and operation at the Site for Engineer's approval prior to delivery of the Equipment and Materials.
- 5. Resubmit Submittals the number of times required for Engineer's "No Exceptions Taken." However, any need for resubmittals in excess of the number set forth in the accepted schedule, or any other delay in obtaining approval of Submittals, will not be grounds for extension of the Contract Times, provided Engineer completes his reviews within the times specified.

E. Transmittal of Submittals:

- 1. All Submittals for Equipment and Materials furnished by Contractor, Subcontractors, manufacturers, and Suppliers shall be submitted to Engineer by Contractor.
- 2. Unless otherwise directed by Engineer (e.g., O&M Manuals or other data where paper copies are preferred), electronic submittals in .pdf format will be accepted via email.
- 3. After checking and verifying all field measurements, transmit all Submittals to Engineer for approval as follows:
  - a. Submittal Information Block:
    - 1) Affix to all paper copies whether Submittal is prepared by Contractor, Subcontractor, or Supplier.
- 4. Mark each Submittal by Project name and number, Contract title and number, and the applicable Specification Section and Article number. Include in the letter of transmittal the Drawing number and title, sheet number (if applicable), revision number, and electronic filename (if applicable). Unidentified Submittals will be returned for proper identification. Additional information regarding Engineer's requirements will be provided at the Preconstruction Conference.

5. Check and include Contractor's approval for Submittals of Subcontractors, Suppliers, and manufacturers prior to transmitting to Engineer. Contractor's approval shall constitute a representation to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or Contractor assumes full responsibility for doing so, and that Contractor has coordinated each Submittal with the requirements of the Work and the Contract Documents.
  - a. At the time of each submission, call to the attention of Engineer in the letter of transmittal any deviations from the requirements of the Contract Documents.
  - b. Make all modifications noted or indicated by Engineer and return revised Submittals until approved. Direct specific attention in writing, or on revised Submittals, to changes other than the modifications called for by Engineer on previous Submittals. After paper copy Submittals have been approved, submit copies thereof for final distribution. Previously approved Submittals transmitted for final distribution will not be further reviewed and are not to be revised. If errors are discovered during manufacture or fabrication, correct the Submittal and resubmit for review.
  - c. Following completion of the Work and prior to final payment, furnish record documents and approved Samples and Shop Drawings necessary to indicate "as constructed" conditions, including field modifications, in the number of copies specified. Furnish additional copies for insertion in Equipment instruction books and operating manuals as required. All such copies shall be clearly marked "PROJECT RECORD."
  - d. Keep a copy or sample of each Submittal in good order at the Site.
6. Quantity Requirements: [Quantities shown are for paper copies; when electronic copies are acceptable, only one electronic copy is required.]
  - a. Except as otherwise specified, transmit all Shop Drawings in the following quantities:
    - 1) Initial Submittal: Paper – 6 copies to Engineer. 3 copies will be returned to Contractor.
    - 2) Resubmittals: Paper – 6 copies to Engineer. 3 copies will be returned to Contractor.
    - 3) Submittal for final distribution: Paper – 3 copies plus the number required by Contractor, to Engineer.
    - 4) As-constructed documents: Paper – 3 copies to Engineer.
  - b. Transmit Submittals of product data as follows:
    - 1) Initial Submittal: Paper – 6 copies to Engineer. 3 copies will be returned to Contractor.
    - 2) Resubmittals: Paper – 6 copies to Engineer. 3 copies will be returned to Contractor.
    - 3) Submittal for final distribution: Paper – 3 copies plus the number of copies required by Contractor, to Engineer.
  - c. Transmit Submittals of Material Samples, color charts, and similar items as follows:
    - 1) Initial Submittal – 5 to Engineer.
    - 2) Resubmittal – 5 to Engineer.
    - 3) Upon approval, – 2 Samples will be returned to Contractor.
  - d. Transmit Submittals of Equipment instruction books and operating manuals as follows:
    - 1) Initial Submittal: Paper – 5 copies to Engineer. One copy will be returned to Contractor.

- 2) Resubmittals: Paper – 5 copies to Engineer. One copy will be returned to Contractor.
  - 3) Submittal for Final Distribution – 4 paper copies to Engineer. Digital – 2 copies to Engineer.
  - e. Transmit Submittals for reference only: Paper – 4 copies to Engineer.
  - f. Owner may copy and use for internal operations and staff training purposes any and all document Submittals required by this Contract and approved for final distribution, whether or not such documents are copyrighted, at no additional cost to Owner. If permission to copy any such Submittal for the purposes stated is unreasonably withheld from Owner by Contractor or any Subcontractor, manufacturer, or Supplier, Contractor shall provide to Engineer 30 copies plus the number of copies required by Contractor at each final distribution issue.
  - 7. Equipment erection drawings and other Submittals required for the installation of Equipment furnished by others under separate contract for installation under this Contract will be transmitted to Contractor by Engineer in the final distribution of such Submittals.
  - 8. Information to Manufacturer's District Office: Contractor shall arrange for manufacturers and Suppliers of Equipment and Materials to furnish copies of all agreements, drawings, specifications, operating instructions, correspondence, and other matters associated with this Contract to the manufacturer's district office servicing the Owner. Insofar as practicable, all business matters relative to Equipment and Materials included in this Contract shall be conducted through such local district offices.
- F. Engineer's Review:
- 1. Engineer will review and return Submittals to Contractor with appropriate notations. Instruction books and similar Submittals will be reviewed by Engineer for general content but not for basic details.
  - 2. Work requiring a Submittal shall not be commenced or shipped until the Submittal has been marked "No Exceptions Taken" or "Make Corrections Noted" by Engineer.
  - 3. Engineer's acceptance of Submittals will not relieve Contractor from Contractor's responsibility as stated in the GENERAL CONDITIONS.
- G. Submittal Action Stamp: Engineer's review action will appear on all submittals of Contractor when returned by Engineer to Contractor. Review status designations listed on Submittal Action Stamp are defined as follows:
- 1. No Exceptions Taken: Signifies equipment or material represented by the submittal conforms with the design concept and complies with the intent of the Contract Documents and is accepted for incorporation in the Work. Contractor is to proceed with fabrication or procurement of the items and with related work.
  - 2. Make Corrections Noted: Signifies equipment or material represented by the submittal conforms with the design concept and complies with the intent of the Contract Documents and is accepted for incorporation in the Work. Contractor is to proceed with fabrication or procurement of the items and with related work in accordance with Engineer's notations.
  - 3. Amend and Resubmit: Signifies equipment or material represented by the submittal appears to conform with the design concept and complies with the intent of the Contract Documents, but information is either insufficient in detail or contains discrepancies which prevent Engineer from completing his review. Contractor is to resubmit revised information responsive to Engineer's annotations on the returned submittal or written in the letter of transmittal. Fabrication or procurement of items represented by submittal and related work shall not proceed until the submittal is accepted.

4. Rejected – See Remarks: Signifies equipment or material represented by the submittal does not conform with the design concept or comply with the intent of the Contract Documents and is not accepted for incorporation in the Work. Contractor is to provide submittal responsive to the Contract Documents and to Engineer’s notations. Fabrication or procurement of items represented by submittal and related work shall not proceed.

#### 1.4 INFORMATION SUBMITTALS

A. Informational Submittals are comprised of technical reports, administrative Submittals, and guarantees which relate to the Work, but do not require Engineer approval prior to proceeding with the Work. Informational Submittals include:

1. Welder qualification tests.
2. Welding procedure qualification tests.
3. X-ray and radiographic reports.
4. Hydrostatic testing of pipes.
5. Field test reports.
6. Concrete cylinder test reports.
7. ASME pressure vessel test reports.
8. Certification on Materials:
  - a. Steel mill tests.
  - b. Roofing lab tests.
  - c. Brick and concrete masonry unit lab tests.
  - d. Paint lab tests.
  - e. Metal paneling lab tests.
  - f. Cement tests.
9. Soil test reports.
10. Air handling balancing reports.
11. Temperature records.
12. Piping stress analysis.
13. Shipping or packing lists.
14. Job progress schedules.
15. Equipment and Material delivery schedules.
16. Progress photographs.
17. Warranties and guarantees.
18. Fire protection and hydraulic calculations.

B. Transmittal of Informational Submittals:

1. All informational Submittals furnished by Subcontractors, manufacturers, and Suppliers shall be submitted to Engineer by Contractor unless otherwise specified.
  - a. Identify each informational Submittal by Project name and number, Contract title and number, and the Specification Section and Article number marked thereon or in the letter of transmittal. Unidentifiable Submittals will be returned for proper identification.
  - b. At the time of each submission, call to the attention of Engineer in the letter of transmittal any deviations from the requirements of the Contract Documents.
2. Quantity Requirements:
  - a. Technical reports and administrative Submittals except as otherwise specified:
    - 1) Engineer: Three copies.
  - b. Written Certificates and Guarantees:
    - 1) Engineer: 6 copies.

3. Test Reports:
  - a. Responsibilities of Contractor, Owner, and Engineer regarding tests and inspections of Equipment and Materials and completed Work are set forth elsewhere in these Contract Documents.
  - b. The party specified responsible for testing or inspection shall in each case, unless otherwise specified, arrange for the testing laboratory or reporting agency to distribute test reports as follows:
    - 1) Engineer: Two copies.
    - 2) Resident Project Representative: One copy.
    - 3) Contractor: Two copies.
    - 4) Manufacturer or Supplier: One copy.

C. Engineer's Review:

1. Engineer will review informational Submittals for indications of Work or Material deficiencies.
2. Engineer will respond to Contractor on those informational Submittals which indicate Work or Material deficiency.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 01330

## SECTION 01600 – EQUIPMENT AND MATERIALS

### PART 1 - GENERAL

#### 1.1 SUMMARY

- A. This section includes administrative and procedural requirements governing Contractor's selection of products for use in the Work.

#### 1.2 DEFINITIONS

- A. Definitions used in this Article are not intended to change the meaning of other terms used in these Contract Documents, such as "specialties," "systems," "structures," "finishes," "accessories," and similar terms. Such terms are self-explanatory and have well-recognized meanings in the construction industry.
  - 1. "Products" are items purchased for incorporation in the Work, whether purchased for the Work or taken from previously purchased stock. The term "product" includes the terms "Material," "Equipment," "system," and terms of similar intent.
    - a. "Named Products" are items identified by the manufacturer's product name, including make or model number or other designation, shown or listed in the manufacturer's published product literature, that is current as of the date of the Contract Documents.
  - 2. "Materials" are products substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated, processed, or installed to form a part of the Work.
  - 3. "Equipment" is a product with operational or non-operational parts, whether motorized, or manually operated, that may require service connections, such as wiring or piping.

#### 1.3 SUBMITTALS

- A. Submittals for products are specified in Section 01330 and in applicable Sections of Divisions 2 through 16.

#### 1.4 QUALITY ASSURANCE

- A. Source Limitations: To the fullest extent possible, provide products of the same kind from a single source.
  - 1. When specified products are available only from sources that do not, or cannot, produce a quantity adequate to complete Project requirements in a timely manner, consult with Engineer to determine the most important product qualities before proceeding. Qualities may include attributes, such as visual appearance, strength, durability, or compatibility. When a determination has been made, select products from sources producing products that possess these qualities, to the fullest extent possible.
- B. Compatibility of Options: When the Contractor is given the option of selecting between 2 or more products for use on the Project, the product selected shall be compatible with products previously selected, even if previously selected products were also options.
- C. Nameplates: Along with required labels and operating data, manufacturer or producer's nameplates, imprints, or trademarks may be placed on surfaces exposed to view.

1. Labels: Locate required product labels and stamps on concealed surfaces or, where required for observation after installation, on accessible surfaces that are not conspicuous.
2. Equipment Nameplates: Provide a permanent nameplate on each item of service-connected or power-operated Equipment. Locate on an easily accessible surface that is inconspicuous in occupied spaces. The nameplate shall contain the following information and other essential operating data:
  - a. Name of product and manufacturer including address (and telephone number).
  - b. Model and serial number.
  - c. Capacity.
  - d. Speed.
  - e. Ratings.

## 1.5 TRANSPORTATION AND SHIPMENT

- A. Shipment Preparation:
  1. Contractor shall require manufacturers and Suppliers to prepare products for shipment in a manner to facilitate unloading and handling, and to protect against damage, deterioration, or unnecessary exposure to the elements in transit and storage. Provisions for protection shall include the following:
    - a. Crates or other suitable packaging materials.
    - b. Covers and other means to prevent corrosion, moisture damage, mechanical injury, and accumulation of dirt in motors, electrical equipment, and machinery.
    - c. Suitable rust-preventive compound on exposed machined surfaces and unpainted iron and steel.
    - d. Grease packing or oil lubrication in all bearings and similar items.
- B. Marking: Each product item shall be tagged or marked as identified in the delivery schedule or on Submittals. Complete packing lists and bills of material shall be included with each shipment. Each piece of every item need not be marked separately, provided that all pieces of each item are packed or bundled together and the packages or bundles are properly tagged or marked.

## 1.6 PRODUCT DELIVERY, STORAGE, AND HANDLING

- A. Deliver, store, and handle products according to the manufacturer's recommendations, using means and methods that will prevent damage, deterioration, and loss, including theft.
  1. Schedule delivery to avoid long-term storage at the Site and to prevent overcrowding of construction spaces. Allow ample time to avoid delay of the Work.
  2. Coordinate delivery with installation time to assure minimum holding time for items that are flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other losses.
  3. Deliver products to the Site in an undamaged condition in the manufacturer's original sealed container or other packaging system, complete with labels and instructions for handling, storing, unpacking, protecting, and installing.
  4. Inspect products upon delivery to ensure compliance with the Contract Documents and to ensure that products are undamaged and properly protected. Inspect shipment to assure:
    - a. Product complies with requirements of Contract Documents and reviewed Submittals.
    - b. Quantities are correct.
    - c. Containers and packages are intact and labels are legible.
    - d. Products are properly protected and undamaged.

5. Store products at the Site in a manner that will facilitate inspection and measurement of quantity or counting of units. Mark deliveries of component parts of Equipment to identify the Equipment, to permit easy accumulation of parts, and to facilitate inspection and measurement of quantity or counting of units.
6. Store heavy Materials away from the Project structure in a manner that will not endanger the supporting construction.
7. Protect exposed machined surfaces and unpainted iron and steel as necessary with suitable rust-preventive compounds.
8. Protect bearings and similar items with grease packing or oil lubrication.
9. Handle and store steel plate, sheet metal, and similar items in a manner to prevent deformation.
10. For storage of pipe and other products on easements and rights-of-way in residential and commercial areas, do not exceed the minimum required by scheduled laying operations, and conform to all requirements of public authorities. Store or place pipe along roads, set back from shoulder or curb, and at an angle tending to deflect vehicles if struck. Place or block pipe to preclude its accidental movement.
11. Store electrical equipment in a climate controlled environment.

B. Handling:

1. Provide equipment and personnel necessary to unload and handle products, by methods to prevent damage or soiling to products, or packaging.
2. Handle by methods to prevent bending or overstressing. Where lifting points are designated, lift components only at those points.
3. Provide additional protection to surrounding surfaces as necessary to prevent damage.

C. Maintenance of Storage:

1. Inspect stored products on a scheduled basis.
2. Verify that storage facilities comply with manufacturer's product storage requirements, including environmental conditions continually maintained.
3. Verify that surfaces of products exposed to elements are not adversely affected; that any weathering of finishes is acceptable under requirements of Contract Documents.
4. For mechanical and electrical Equipment in long-term storage, provide manufacturer's service instructions to accompany each item, with notice of enclosed instructions on exterior of package. Service Equipment on a regularly scheduled basis. Maintain stored products according to manufacturer's recommendations.

- D. Protection After Installation: Provide substantial coverings as necessary to protect installed products from damage from subsequent construction operations. Remove coverings when no longer needed or as specified.

## 1.7 EXISTING EQUIPMENT AND MATERIALS

- A. Products to be Reused: For Equipment and Materials specifically indicated or specified to be reused in the Work, use special care in removal, handling, storage, and reinstallation to assure proper function in the completed Work. Arrange for transportation, storage, and handling of products which require off-Site storage, restoration, or renovation and pay all costs for such Work. Contractor may at his option, furnish and install new items in lieu of those specified to be reused.

## PART 2 - PRODUCTS

### 2.1 PRODUCT SELECTION

- A. General Product Requirements: Provide products that comply with the Contract Documents, that are undamaged and, unless otherwise specified or indicated, new at the time of installation.
1. Provide products complete with accessories, trim, finish, safety guards, and other devices and details needed for a complete installation and the intended use and effect.
  2. Where available, provide standard products of types that have been produced and used successfully in similar situations on other projects.
  3. Continued Availability: Where, because of the nature of its application, Owner is likely to need replacement parts or additional amounts of a product during the service life of the product, either for maintenance and repair or replacement, provide standard products for which the manufacturer has published assurances that the products and its parts are likely to be available to Owner during the service life of the product.
  4. Conform to applicable Specifications, codes, standards, and regulatory agencies.
  5. Comply with size, make, type, and quality specified, or as specifically approved in writing by Engineer.
  6. Manufactured and Fabricated Products:
    - a. Design, fabricate, and assemble in accordance with the best engineering and shop practices.
    - b. Manufacture like parts of duplicate units to standard sizes and gages, to be interchangeable.
    - c. Equipment and Materials shall be suitable for service conditions intended.
    - d. Equipment capacities, sizes, and dimensions indicated or specified shall be adhered to unless variations are specifically approved in writing by Engineer.
  7. Do not use products for any purpose other than that for which designed.
  8. To the fullest extent possible, provide products of the same kind from a single source.

## PART 3 - EXECUTION

### 3.1 INSTALLATION OF PRODUCTS

- A. Comply with manufacturer's instructions and recommendations for installation of products in the applications indicated. Anchor each product securely in place except as required for proper movement and performance, and accurately located and aligned with other Work.
1. Obtain and distribute copies of manufacturer's printed instructions and recommendations if not a part of Submittals, containers, or packaging to parties involved in the installation, including a copy to Engineer and Resident Project Representative.
  2. Maintain one complete set of instructions at the Site during installation and until completion.
  3. Handle, install, connect, clean, condition, and adjust products in accordance with such instructions and in conformance with specified requirements. Should job conditions or specified requirements conflict with manufacturer's instructions, consult with Engineer for further instructions.
- B. Clean exposed surfaces and protect as necessary to ensure freedom from damage and deterioration at time of Substantial Completion.

END OF SECTION 01600

## SECTION 01660 – TESTING

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

#### 1.2 SUMMARY

- A. The Owner will procure an independent testing agency and pay costs associated with inspection or testing required in connection with Owner's or Engineer's acceptance of materials or equipment incorporated in the Work, with particular descriptions and exceptions as provided for in Article 13 of the General Conditions.
- B. All costs associated with water usage for testing purposes shall be paid by Contractor, unless otherwise specified.

#### 1.3 CERTIFICATES OF COMPLIANCE

- A. The Contractor shall be responsible for furnishing to the Engineer materials and equipment manufacturers' duly sworn certificates of compliance as noted and required elsewhere in these Specifications with all requirements and provisions of applicable standards such as, but not limited to, AWWA, ASTM, ANSI, AASHTO, AHTD, or others for all materials and equipment delivered to this Project.

#### 1.4 SPECIFIC REQUIREMENTS

- A. Specific requirements for testing and certificates of compliance are set forth in these Technical Specifications for each item of work.

### PART 2 - PRODUCTS (NOT USED)

### PART 3 - EXECUTION (NOT USED)

END OF SECTION 01660