

PROJECT MANUAL

FOR

LENNAR HOMES OF TEXAS
ON BEHALF OF
CANYON RANCH MUD OF COMAL COUNTY

CANYON RANCH UNIT 5
“WATER, SEWER, STREET AND DRAINAGE
IMPROVEMENTS”

VOLUME 1

Prepared for:

LENNAR HOMES OF TEXAS
ON BEHALF OF
CANYON RANCH MUD
901 SOUTH MOPAC EXPY SUITE 225
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TBPE Registration No. F-1046
July 8, 2026

**LENNAR HOMES OF TEXAS
ON BEHALF OF CANYON RANCH MUD
CANYON RANCH UNIT 5 IMPROVEMENTS
STANDARD CONTRACT DOCUMENTS
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VOLUME 1

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- “Subsurface Exploration and Pavement Analysis, Proposed New Streets, Canyon Ranch, Unit 5 Comal County, Texas” prepared by InTEC, February 2025

VOLUME 3
CONSTRUCTION PLANS

- “Canyon Ranch Unit 5, Comal County, Civil Construction Drawings; “Water, Sewer, Street & Drainage Improvements”, June 2026.

VOLUME 4
PEC ELECTRICAL PLANS

INVITATION TO BIDDERS

Sealed Bids addressed to Canyon Ranch Municipal Utility District of Comal County, Attention, Board of Directors, will be received at the office of BGE Inc., 7330 San Pedro Ave, Suite 202, San Antonio, TX 78216, until 10:30 a.m. Local Time, July 29, 2026, and then publicly opened and read for "Canyon Ranch Unit 5, Paving, Water, Drainage, and Wastewater Improvements."

The work shall consist of the following: Stormwater Reinforced Concrete Pipe Including Approximately 18"- 60" Pipe, Headwalls and Appurtenances; Water Piping Including 8"-16" PVC and Ductile Iron Mains and Appurtenances; Wastewater Piping consisting of 4" - 8" PVC Pipe and Appurtenances; Pressure (Force main) Piping consisting of 6" PVC Pipe and appurtenances; Excavation, Embankment, and Paving of Streets, Curb and Gutter, Sidewalk; Sedimentation & Erosion Control; Water Quality Improvements, Vegetated Filter Strips, and Various Other Site Improvements.

Bids received after the closing time will be returned unopened. A **NON-MANDATORY** pre-bid conference will be held on July 22, 2026 at 10:00 a.m. Local Time, via Microsoft Teams. The call-in information for the pre-bid meeting (via Microsoft Teams) is:

Meeting ID: 255 264 897 321 432

Phone Number: 832-680-2579

Passcode: Q3uE67Ey

Phone Conference ID: 899 732 759#

Each Bid must be accompanied by a Bid Bond or a certified or cashier's check, acceptable to the Owner, in an amount not less than two percent (5%) of the total amount Bid, as a guarantee that the successful bidder will enter into the Contract Documents and execute the Bonds on the forms provided and provide the required insurance certificates within seven (7) days after the date Contract Documents are received by the Contractor. If a certified or cashier's check is provided, the successful bidder shall deliver, at the bid opening address, the *original* certified or cashier's check within twenty-four (24) hours of receipt of the bid opening.

By submitting a Bid, Bidder acknowledges and agrees that the Contract Documents may be accepted, executed, or agreed to using an Electronic Signature, as defined by and in accordance with Owner's Electronic Signature Rules for Construction Contracts.

Bidding documents may be examined at the offices of BGE Inc., 7330 San Pedro Ave, Suite 202, San Antonio, TX, 78216 or may be obtained by prospective bidders from www.CivcastUSA.com. Search Canyon Ranch Amenity Center. Bidders must register on this website in order to view and/or download specifications, plans, soils report, and environmental reports for this Project. There is NO charge to view or download documents.

All questions pertaining to the bid must be submitted at least seven (7) calendar days prior to bid opening through www.CivcastUSA.com in the Q&A portal.

The Owner reserves the right to reject any or all Bids and to waive all defects and irregularities in bidding or bidding process except time of submitting a Bid. The Successful Bidder, if any, will be the responsible Bidder which in the Board's judgment will be most advantageous to the District and result in the best and most economical completion of the Project.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Bid and the Contractor agrees that the Contract Documents can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**CANYON RANCH MUD
CANYON RANCH UNIT 5 “WATER, SEWER, STREETS AND DRAINAGE
IMPROVEMENTS”
INSTRUCTIONS TO BIDDERS**

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 Bidders must submit evidence that they meet the minimum qualifications to bid for this project.
- 3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

- A. Copies of reports and drawings will be made available by Owner to Bidder. Those reports and drawings are not part of the Contract Documents, but are additional "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing 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, including Owner, or others.

- 4.03 Not Used
- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 4.06 of the General Conditions.
- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as 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. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.
- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other 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 contemplated by these Bidding Documents. 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 other work.
- B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data";

- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
 - F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 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 Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01 A pre-Bid conference will be held as described in the Invitation to Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders may attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding 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.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed, e-mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than seven (7) days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 (Five) percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid Bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. 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 seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially complete and the number of days that the project will be complete and ready for final payment, The Contract Times, are set forth in Section 00300, Bid Form, Article 6.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages are set forth in Section 00500, Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material 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.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

12.01 Section 00300 requires the identity of Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute.

12.02 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from the Engineer.

13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item, alternative listed therein.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice- president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.

13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

13.06 A Bid by an individual shall show the Bidder’s name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venture in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

13.08 All names shall be printed in ink below the signatures.

- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.
- 13.12 Bidder must submit an original computer printout sheet bearing certification by, and signature for, the Bidder. The unit prices shown on acceptable printouts will be the unit prices used to tabulate the Bid and used in the Contract if awarded by the Owner. As a minimum, computer printouts must contain the information and in the arrangement shown on the Bid Form.

Bidder must still execute that portion of the unit price Bid Form which acknowledges the Bid Guaranty, Time of Completion, Liquidated Damages, and all addenda that may have been issued.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 The unbound copy of the Bid Form is to be completed and submitted with the Bid security to perform the work.
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to **BGE, Inc., 7330 San Pedro, Suite 202, San Antonio, TX 78216.**

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 1601 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 1602 If within forty-eight (48) 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, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also 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. 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.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors,

Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.

- 19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.
- 19.07 Owner reserves the right to negotiate pricing for items that are non-MUD reimbursable.
- 19.08 Contract will be awarded based on the low total bid as totaled in Section 00300 Bid Form.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 14 calendar days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten calendar days thereafter, Owner shall deliver two fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 – SALES AND USE TAXES

22.01 Bid prices shall not include sales, excise, and use taxes on installed equipment and materials. OWNER is a municipal utility district, a political subdivision of the State of Texas and is exempt from such taxes. An exemption certificate shall be furnished to CONTRACTOR, subcontractors and suppliers upon request.

CONTRACTOR may have sales tax liability for materials and supplies used for the project but for which CONTRACTOR is considered the consumer.

To obtain possible tax benefits by the separation of materials and labor, Bidders should be familiar with the Comptroller's Rules 3.291 (Contractors), 3.292 (Repairmen), and 3.347 (Improvements to Realty), which may be obtained from the Texas Comptroller of Public Accounts.

ARTICLE 23 – RETAINAGE

23.01 Provisions concerning Contractor’s rights to deposit securities in lieu of retainage are set forth in Section 00500, Agreement.

END

The OWNER has obtained geotechnical information, which may include laboratory test results, logs of borings, and recommendations from geotechnical consultants. That information will be included as Volume 2. The CONTRACTOR shall be familiar with the subsurface materials and conditions on the Project and shall be knowledgeable of how they will affect the Work. The following is a partial listing of sources of information available to the CONTRACTOR about subsurface materials and conditions: The geotechnical information provided by the OWNER; geologic maps, publications and reports available from the University of Texas Bureau of Economic Geology at the J.J. Pickle Research Center in Austin, Texas; subcontractors familiar with local ground conditions; and, local consulting geologists and geotechnical engineers.

“GEOTECHNICAL ENGINEERING REPORT, CANYON RANCH AMENITY CENTER, FM 306 SPRING BRANCH, TEXAS”, dated August 30, 2024, prepared by PSI is attached.

The requirements in the Drawings and Specifications shall be used in the event of a conflict between this report and the Drawings and Specifications.

END

BID FORM

**CANYON RANCH MUD,
CANYON RANCH UNIT 5 “WATER, SEWER, STREETS AND
DRAINAGE IMPROVEMENTS”**

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Lennar Homes of Texas
On behalf of
Canyon Ranch MUD
c/o BGE, Inc.
7330 San Pedro, Suite 202
San Antonio, TX 78216

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

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

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

- 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, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) as containing reliable “technical data”.

- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Whereas, the Engineer has prepared certain drawings, specifications and/or other data in electronic form (the "Electronic Media") for the Project, on behalf of the Owner, and whereas the Bidder is a Contractor, Subcontractor, Consultant, interested party, or provider of services or labor and materials for said Client, and the Bidder desires to obtain electronic copies of certain of the Engineer's Electronic Media for the Project, and whereas Engineer has provided a copy of the Electronic Media for the convenience of the Bidder only under certain express conditions of understanding, acknowledgement and covenant as hereinafter provided without qualification. Now, therefore, in consideration of the Submittal of this Bid, the delivery by Engineer of the Electronic Media to the Bidder, and other good and valuable consideration, Engineer and Bidder agree as follows:
 - 1. **ACKNOWLEDGMENT AND LIMITATIONS:** It is acknowledged that Engineer retains all common law, statutory and other rights, including copyrights, to the Electronic Media. The Electronic Media may not be a complete set of all of the instruments of professional services applicable to the Project and the Electronic Media are not substitutions for the instruments of professional services relating to the Project. Differences may exist between the instruments of professional services and the Electronic Media which Engineer is under no obligation to discover or disclose if known. The Electronic Media may be incompatible with Bidder's software and hardware configurations. In all ways, including those enumerated, Bidder accepts the Electronic Media "as is" and with all faults and Engineer is under no obligation to correct, update for changes, enhance or maintain the electronic Media for Bidder. Engineer does not represent or warrant that the Electronic Media are

complete, free from defects, or accurate now or in the future. It is acknowledged, finally, that no client relationship is created by or through this Agreement between Engineer and Bidder. Under no circumstance shall the transfer of the Electronic Media to Bidder be deemed a sale by Engineer to Bidder.

2. Subject in all respects to Bidder's strict compliance with the terms and conditions of this Agreement, Engineer hereby grants to Bidder a non-exclusive, non-sublicensable, non-transferable license under Engineer's intellectual property rights to utilize, make copies and produce derivative works of the information contained in the Electronic Media, but solely in connection with the Bidder's services and/or work on the Project. Notwithstanding the above, this Agreement does not create any duty or obligation owed by Engineer to Bidder with respect to Bidder's performance of its obligations under any agreement with any third party. Bidder agrees that it shall not use the Electronic Media, in whole or in part, for any purpose or project other than the Project. Bidder acknowledges that the Electronic Media are subject to change or modification and Bidder agrees to bear full responsibility to update any derivative works produced from the Electronic Media. The Bidder shall provide Engineer with written notice of any errors or omissions in the Electronic Media within seven (7) days following Bidder's discovery of any such error or omission. Bidder acknowledges and agrees that, apart from the rights licensed under this paragraph two (2), this agreement does not grant to Bidder any ownership right, title or interest in the Electronic Media or Engineer's intellectual property.
3. WAIVER AND RELEASE: BIDDER AGREES ALL RISK OF INCOMPLETE, INACCURATE, DEFECTIVE AND VARIANT INFORMATION CONTAINED IN THE ELECTRONIC MEDIA, AND WAIVES, QUILTS, AND FOREVER DISCHARGES AND RELEASES THE CLIENT, THE ENGINEER AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND SUCCESSORS FROM EVERY CLAIM, DEMAND, DAMAGE, CAUSE OF ACTION, LOSS, EXPENSE AND LIABILITY (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RELATED TO ANY ERROR, DISCREPANCY, INACCURACY, VARIATION OR OTHER DEFECT IN THE ELECTRONIC MEDIA, WHETHER OR NOT RESULTING IN WHOLE OR IN PART FROM AN ACT, ERROR OR OMISSION OF THE ENGINEER AND WHETHER OR NOT SUCH CLAIMS ARE KNOWN OR UNKNOWN AS OF THE DATE OF THIS BID SUBMISSION.
4. REUSE: The Electronic Media is not reusable for any other project or for additions or extensions of the Project identified in the Electronic Media. Engineer does not authorize release of the Electronic Media to any person or party other than the Bidder, and the Bidder agrees and covenant not to release the Electronic Media to any other party.
5. INDEMNIFICATION: USE OF THE ELECTRONIC MEDIA SHALL BE AT THE SOLE RISK OF THE BIDDER AND WITHOUT LIABILITY OF LEGAL EXPENSE TO THE CLIENT OR THE ENGINEER. BIDDER SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD HARMLESS THE CLIENT, THE ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, MEMBERS, PARTNERS, AGENTS, REPRESENTATIVES, ASSIGNS AND SUCCESSORS FROM ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RESULTING IN WHOLE

OR IN PART FROM BIDDER'S USE OF, OR RELIANCE ON THE ELECTRONIC MEDIA.

6. **DISPUTES:** Due to the risk of damage, anomalies in transcription or copying and modification during use by Bidder where intended or otherwise, it is agreed the Engineer's archived copy of the Electronic Media is the only official version. Engineer's archived copy of the Electronic Media shall be conclusive, un rebuttable proof in all disputes over the content of the Electronic Media furnished to Bidder by the Agreement. THIS AGREEMENT SHALL BE GOVERNED BY AND BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF TEXAS.
7. Paragraphs 1, 3, 4, 5 and 6 shall survive whether this Bid is accepted or not.
8. All terms and conditions above are hereby agreed to and accepted by Bidder in their entirety as a condition of receipt of the Electronic Media and submitting a Bid.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

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

All specified cash allowances are included in the price(s) set forth above, and have been computed in accordance with Paragraph 11.02 of the General Conditions.

ARTICLE 6 – TIME OF COMPLETION.

- 6.01 Bidder agrees that the Work will be substantially complete within **two hundred and forty (240)** calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **two hundred and seventy (270)** calendar days after the date when the Contract Times commence to run.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. List of Proposed Suppliers;
 - D. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - E. Evidence of meeting the minimum qualifications.
 - F. Digital file of the Bid forms (from Article 5) in Microsoft Excel compatible format, subject to the following allowances and conditions:
 - 1. The digital file must be delivered to the Engineer no later than 24 hours after Bid opening.
 - 2. The digital file must be delivered via email, or physically delivered on appropriate media such as a compact disk (aka. CD).

ARTICLE 8 – DEFINED TERMS

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

ARTICLE 9 – BID SUBMITTAL

- 9.01 This Bid is submitted by:
- If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest _____

Date of Qualification to do business in *[State where Project is located]* is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

E-mail _____

SUBMITTED on _____, 20____.

BID SECURITY

(BIDDER to fasten acceptable Bid Security to this page)

MINIMUM QUALIFICATIONS

(BIDDER to fasten evidence of qualifications to this page)

The contractor shall submit evidence that they meet the following minimum qualifications:

1. A total bonding capacity of at least \$5 million dollars.
2. List five local (within the San Antonio-New Braunfels MSA), completed jobs over \$5 million dollars, including name and contact information of a reference for the job.
3. Are you in any lawsuits or legal disputes related to private development work? YES /NO

ARTICLE 10 – SUBMITTAL OF BID FORM ON COMPUTER SPREAD SHEET

Bidder, at its option, in lieu of hand writing in the unit price figures in ink on the Bid forms above, may submit a computer printout sheet bearing certification by, and signature for, the bidding firm. The unit prices shown on acceptable printouts will be the unit prices used to tabulate the Bid and used in the Contract if awarded by the OWNER. The computer printouts must use the digital Bid Form file provided by the Engineer, and must not be modified other than the addition of bid price information, and the certification (shown below).

If a computer printout is used, the bidder must still execute that portion of the unit price Bid form which acknowledges the Bid Guaranty, Time of Completion, Liquidated Damages, and all addenda that may have been issued, “domestic” or “foreign origin”, estimated amount of hazardous waste.

Bids with unit prices by computer printout may be rejected if:

1. The computer printout does not bear the certification verbatim, as shown below.
2. The computer printout is not signed in the name of the firm to whom the Project Manual was issued.
3. The computer printout omits required bid items or includes items not shown on the Bid form in the Contract Documents.
4. The Bid documents issued by the OWNER are not fully executed as provided above.

If the Bid submitted by the bidder contains both the form furnished by the OWNER, completed according to the instructions, and also a computer printout, completed according to the instructions, unit prices of only one will be considered. In this situation, the unit bid prices shown on the computer printout will be used to determine the Bid. In the event of conflict between the two, unit Bid prices will prevail over the extended (Total) prices.

REQUIRED COMPUTER PRINTOUT CERTIFICATION

(YOUR FIRM'S NAME) certifies that the unit prices shown on this complete computer print-out for all of the Bid items and the alternates, if applicable, contained in this proposal are the unit prices intended and that its Bid will be tabulated using these unit prices and no other information from this print-out. *(YOUR FIRM'S NAME)* acknowledges and agrees that the total Bid amount shown will be read as its total Bid and further agrees that the official total Bid amount will be determined by multiplying the unit Bid prices shown in this print-out by the respective estimated quantities shown on the Bid form then totaling all of the extended amounts. In the event of conflict between the two, unit Bid prices will prevail over the extended (Total) prices.

Signed: _____

Title: _____

Date: _____

Sample Agreement

PERFORMANCE BOND

**CANYON RANCH MUD
CANYON RANCH UNIT 5 IMPROVEMENTS**

THE STATE OF TEXAS §
COUNTY OF COMAL §

KNOW ALL MEN BY THESE PRESENTS:

(A) That we, _____, as Contractor-Principal (hereinafter "CONTRACTOR") and _____ (hereinafter "Surety"), do hereby acknowledge ourselves to be held and firmly bound to the LENNAR HOMES OF TEXAS, on behalf of Canyon Ranch MUD, hereinafter "OWNER", in the sum of _____ Dollars for the payment of which sum, well and truly to be made to OWNER, its successors and assigns, the said CONTRACTOR and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

The CONDITIONS of this obligation are such that:

(B) WHEREAS, CONTRACTOR has entered into a Contract in writing with OWNER for completing certain construction consisting of: Stormwater Reinforced Concrete Pipe Including Approximately 18"-54" Pipe, Headwalls and Appurtenances; Water Piping Including 8"-12" PVC Mains and Appurtenances; Wastewater Piping consisting of 4" - 8" PVC Pipe and Appurtenances; Pressure (Force main) Piping consisting of 6" PVC Pipe and appurtenances; Excavation, Embankment, and Paving of Streets, Curb and Gutter, Sidewalk; Sedimentation & Erosion Control; Water Quality Improvements Including Three Batch Detention Ponds, Vegetated Filter Strips, and Various Other Site Improvements. Located in Comal County, Texas, all of which Work is to be done as set out in full in the Contract, including the Plans and Specifications, all of which are made a part of this bond instrument as fully and completely as if set out in full herein;

(C) NOW THEREFORE, if CONTRACTOR shall faithfully and strictly perform the Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Plans and Specification referred to therein, and shall comply strictly with each and every provision of the Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the obligation shall remain in full force and effect.

(D) It is further understood and agreed that Surety has full faith and confidence in the integrity and ability of CONTRACTOR to comply with the terms and conditions of the Contract. If CONTRACTOR does not comply with each and every provision of the Contract and bond, OWNER shall give CONTRACTOR and Surety reasonable notice and opportunity to correct the noncompliance in accordance with the Contract. In the event that the Contractor is declared in default under the said Contract, the Surety shall promptly, but in any event within Thirty (30) days of the Owner's declaration of such default, either:

1. Solicit proposals from a list of Respondents meeting Owner's pre-qualification requirement for completing the Work in accordance with the Contract. Upon determination by Surety and Contractor of a Respondent that meets the original proposal evaluation criteria, Surety shall arrange for that Respondent to enter into a contract with Owner for completing the Work. Surety shall pay all costs

and expenses as they are incurred of completing the Work in accordance with the Contract, including without limitation, the re-proposal, the re-proposal evaluation, re-bonding, completion of the Work (including existing and future change orders) and any additional expenses and costs that the Owner may incur in securing full performance of the work; or

1. Immediately pay the Owner the estimate cost of completing the Work, plus any later amounts in excess of the estimate as they are required for actual completion of the Work, plus any additional expenses and costs that Owner may incur in securing full performance of the Contract.

Conditioned upon the Surety's faithful performance of its obligations, the liability of the Surety for the Contractor's default shall not exceed the penalty of this bond.

a. Surety understands and agrees any provisions in the Contract whereby OWNER may withhold retainage due CONTRACTOR until Acceptance of the Work, liquidated damages, the reasonable cost of completing incomplete work, the diminished value of substandard work or other similar terms are intended for Owner's benefit and Owner shall have priority to all such funds over the Surety. OWNER shall have the right to pay or withhold retainage or any other amount that the Contract permits the Owner to withhold without changing or affecting the liability of Surety in any degree.

b. Subject to paragraphs D and E hereof, after completion and Acceptance of the Work, Owner shall pay to Surety any remaining, unpaid amounts of the Original Contract Price, less any remaining unreimbursed expenses or costs described in subparagraphs (D)(1) or (D)(2) above.

c. This bond is issued pursuant to the requirements of Section 2253.021, Texas Government Code, as amended.

d. Provided further, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deduction or addition to the terms of the said Contract, or to the Work to be performed thereunder, or the Plans and Specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, deduction or addition, to the terms of the said Contract or to the Work or to the Plans and Specifications.

(I) In the event that OWNER should bring a suit or other proceeding at law on the Contract or this bond or both and if Owner prevails, CONTRACTOR and Surety agree to pay to OWNER an additional amount equal to reasonable attorneys' fees and costs of the suit or legal proceeding.

(J) This bond and all obligations created hereunder shall be performed in Comal County, Texas.

(K) By signature hereon, if the amount of this bond exceeds \$100,000, then the Surety attests that at the time the bond was executed (and Surety shall provide the Oblige with evidence of the following):

- (1) it was a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or
- (2) had reinsured any liability in excess of \$100,000 by a reinsurer holding a certificate of authority from the United States Secretary of the Treasury.

CONTRACTOR

Company Name: _____

By: _____

Typed name: _____

Title: _____

Attest: _____

CONTRACTOR's Secretary

SURETY

Company Name: _____

Mailing Address for Notices:

By: _____

Title: _____

The foregoing bond is approved and accepted this _____ day of _____, 202_____

LENNAR HOMES OF TEXAS, *on behalf of*
CANYON RANCH COUNTY MUD

By: _____

Title: _____

LABOR & MATERIAL PAYMENT BOND

**CANYON RANCH MUD,
CANYON RANCH UNIT 5 IMPROVEMENTS**

THE STATE OF TEXAS §

COUNTY OF COMAL §

KNOW ALL MEN BY THESE PRESENTS: That _____ as Principal (CONTRACTOR) has entered into a Contract with the LENNAR HOMES OF TEXAS, on behalf of CANYON RANCH MUD (OWNER). The terms and conditions of the Contract as set out in the Contract Documents are incorporated into this Bond. CONTRACTOR is required by statute to furnish a bond for the payment of labor and materials.

We, CONTRACTOR and _____ (Surety) are held and firmly bound to OWNER for the sum of _____ for the payment of which we bind ourselves, our heirs, executors, administrators, assigns, and successors jointly and severally by these presents.

If CONTRACTOR and its subcontractors, or the heirs, executors, administrators, successors, assigns, or subcontractors of any of them shall promptly and properly make payment to rightful claimants for work, labor, transportation, materials, equipment or supplies or amounts due under the Unemployment Insurance Act, then this Bond shall become void; otherwise it shall remain in full force and effect until all rightful claims and the accompanying fees, expenses and costs have been paid.

OWNER may issue change orders, alterations, or time extensions to the Contract without affecting Surety's obligations under this Bond. Surety hereby waives any requirement for notice of change orders, alterations, or time extensions.

This Bond shall be governed by the laws of Texas and shall be performed in Comal County, Texas. Any legal action on this bond shall be filed in Comal County, Texas. If OWNER should be awarded damages in a suit or proceeding, Surety agrees to pay to OWNER an additional amount equal to reasonable attorneys' fees and expenses, costs of the suit or proceeding, and OWNER 's expenses.

This Bond is executed pursuant to Chapter 2253 of the Texas Government Code. The requirements of that statute are incorporated into this Bond for all purposes.

CONTRACTOR-PRINCIPAL

Company Name: _____

By: _____

Typed name: _____

Title: _____

Attest: _____

CONTRACTOR's Secretary

SURETY

Company Name: _____

Mailing Address for Notices:

By: _____

Title: _____

The foregoing Bond is approved and accepted this _____ day of _____, 202_.

LENNAR HOMES OF TEXAS, *on behalf of*
COMAL COUNTY MUD

By: _____

Title: _____

STANDARD GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 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.

1.02 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

2.01 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.

2.02 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.

2.03 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.

2.04 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.

2.05 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.

2.06 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.

2.07 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

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. 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.

3.02 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.

3.03 *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).

3.04 *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.

3.05 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.

3.06 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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. 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.

4.02 *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.

4.03 *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.

4.04 *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.

4.05 *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.

4.06 *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

5.01 *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.

5.02 *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.

5.03 *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.

5.04 *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 user 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.

5.05 *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.

5.06 *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.

5.07 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.

5.08 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.

5.09 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

6.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. 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.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. 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.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment

and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- 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.

6.04 *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.

6.05 *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.

6.06 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.

6.07 Patent Fees and Royalties

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

6.08 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.

6.09 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

7.01 *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 otherwork.

7.02 *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.

7.03 *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

8.01 *Communications to Contractor*

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

8.02 *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.

8.03 *Furnish Data*

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

8.04 *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.

8.05 *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.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

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

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 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.

9.03 *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.

9.04 *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.

9.05 *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.

9.06 *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.

9.07 *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.

9.08 *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.

9.09 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

10.01 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.

10.02 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.

10.03 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.

10.04 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.

10.05 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

11.01 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.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
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.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. 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

12.01 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.

12.02 *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.

12.03 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

13.01 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.

13.02 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.

13.03 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.

13.04 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.

13.05 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.

13.06 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.

13.07 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.

13.08 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.

13.09 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

14.01 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.

14.02 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.

14.03 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.

14.04 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.

14.05 *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.

14.06 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.

14.07 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.

14.08 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.

14.09 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

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by 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.

15.02 *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.

15.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 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.

15.04 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

16.01 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

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person 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.

17.02 *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.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract 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.

17.04 *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.

17.05 *Controlling Law*

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

17.06 *Headings*

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

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

ARTICLE 1 - DEFINITIONS

1.01 Defined Terms

19. Engineer - Add the following to the end of the definition:

Josh Janysek, P.E.
BGE, Inc.
7330 San Pedro, Suite 202
San Antonio, TX 78216
(512) 879-0400

29. Owner - Add the following to the end of the definition:

Lennar Homes of Texas, on behalf of
Canyon Ranch MUD
c/o McLean & Murphy, LLP
901 South Mopac Suite 225
(512) 328-2008

Anywhere in the Technical Specifications where the “City of San Antonio”, “City of New Braunfels”, “State of Texas” or “Texas Department of Transportation” is referred to as the OWNER, "Lennar Homes of Texas, on behalf of Canyon Ranch MUD" shall be substituted.

39. Schedule of Values - Add the following to the end of the definition:

“This schedule is to include a Lump Sum Schedule of Values for each item indicated as Lump Sum unless that bid item is completed in 30 days or less. A Lump Sum Schedule of Values for Section 00300 bid item 700S-TM “Mobilization” is not required.”

Add the following Defined Terms

52. Owner's Representative:

Richard Mott
Lennar Homes of Texas
100 NE Loop 410, Suite 1155
San Antonio, TX 78216

53. Lump Sum – A type of unit price work defined by the payment portion of an items specification and indicated as LS in the Unit column of Section 00300 Bid Form.

54. Lump Sum Schedule of Values – A schedule, prepared and maintained by the Contractor, to be included in the Schedule of Values, allocating various portions of the Work toward the

completion of an item bid as Lump Sum per Section 00300 and used as the basis for reviewing Contractor's Applications for Payment. The schedule will identify Unit Price Work, including quantities and prices, for all materials and Work necessary to complete the Lump Sum item.

ARTICLE 2 – PRELIMINARY MATTERS

2.05A.3 Preliminary Schedules: Add the following to paragraph 2.05A.3:

“The CONTRACTOR shall submit a Schedule of Values for any bid item in Section 00300 Bid Form of the documents bid per LUMP SUM unless that bid item is completed in 30 days or less. A Schedule of Values for Section 00300 bid item 700S-TM “MOBILIZATION” is not required.”

ARTICLE 5 - BONDS AND INSURANCE

ADD 5.04 C

C. Other Contractor Insurance Requirements

I. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

1. Coverage A - Statutory
2. Coverage B - \$500,000 Employer's Liability

Contractor and all subcontractors shall maintain sufficient insurance for protection against claims under Workers' Compensation Acts, regardless of whether the injury results from the operations of Contractor, subcontractors, Owner, or of anyone directly or indirectly employed by or associated with any of them. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Insurance Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

- a) Waiver of Subrogation, form WC 420304; and
- b) 30 day Notice of Cancellation, form WC 420601.

II. GENERAL LIABILITY

CONTRACTOR and all Subcontractors shall maintain sufficient insurance to protect CONTRACTOR, OWNER and ENGINEER from any damages, claims, demands, suits, judgments, and costs, including reasonable attorneys' fees and expenses on account of damage to property of any person or entity including property of OWNER, or death of or injury to any person, including employees of OWNER and ENGINEER, arising out of and to the extent caused by CONTRACTOR's acts or omissions or those of its agents, servants, employees or Subcontractors and their agents, servants, or employees.

Provide coverages A & B with minimum limits as follows:

1. Bodily Injury Liability - \$2,000,000 each occurrence
2. Property Damage Liability - \$1,000,000 each occurrence

The Policy shall contain the following provisions:

1. Aggregate limits of insurance per project, endorsement CG 2503.
2. OWNER and ENGINEER listed as an additional insured, endorsement CG 2010.
3. 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.
4. Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

If Comprehensive General Liability coverage is provided, it shall include:

1. Bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors.
2. Broad form comprehensive general liability coverage or its equivalent, with at least the following shall be provided: broad form contractual liability covering this Contract, personal injury liability, broad form property damage liability.

If Commercial General Liability coverage is provided it shall include:

1. Coverage A including premises, operations, products liability and completed operations for the duration of the correction period, independent contractors, contractual liability covering this Contract, fire, legal liability and broad form property damage coverages.
2. Coverage B including personal injury and advertising injury.

3. Coverage C, medical payments.
4. If aggregate limits of liability are specified in the policy, these limits shall be two times the amounts specified in (1) and (2) above, and Contractor shall further provide umbrella coverage equal to the amounts specified in (1) and (2) above.

The property damage coverage shall include:

1. Work in progress; partially completed installations;
2. Destruction or injury to property below the surface of the ground (U), such as wires, conduits, pipes, mains and sewers caused by Contractor's operations;
3. Explosion (X), collapse (C) or injury to any building or structure on or adjacent to Owner's premises caused by Contractor's operations;

III. AUTOMOBILE LIABILITY

Provide coverage in the following types and amounts:

1. Bodily Injury Liability - \$1,000,000 each occurrence
2. Property Damage Liability - \$1,000,000 each occurrence

The Policy shall contain the following endorsements in favor of OWNER:

1. Waiver of Subrogation endorsement TE 2046A;
2. 30 day Notice of Cancellation endorsement TE 0202A; and
3. Additional Insured endorsement TE 9901 B.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.08 Permits: Add the following:

“OWNER will obtain and pay for the following permits, licenses and/or fees:

1. Comal County Development Permit; and
2. Canyon Lake WS SJWTX Development Permit; and
3. Storm Water Pollution Prevention Plan.

6.09 Laws and Regulations: Add the following:

“**6.09 D** This Project is subject to the Texas Commission on Environmental Quality (TCEQ) Texas

Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls throughout the construction period. OWNER is responsible for provision of the Owner's Notice

of Intent and Notice of Termination to the TCEQ. CONTRACTOR's responsibilities are as follows:

1. Maintain a set of construction plans with the temporary erosion and sediment control plan at the Work site at all times.
2. File a Notice of Intent with the TCEQ (form can be obtained from Engineer) and provide OWNER with copy of Notice of Intent.
3. Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion and sediment control measures. This statement shall indicate that the Subcontractor understands the TDPEs requirements.
4. Perform periodic site inspection of temporary sediment and erosion controls. CONTRACTOR shall perform periodic site inspections of temporary sediment and erosion controls as required by the SWP3. CONTRACTOR shall maintain records as required by the SWP3 that indicate any problems and CONTRACTOR's efforts to repair the controls.
5. Note in CONTRACTOR's records any OWNER's, ENGINEER's or regulatory agency's inspector's comments on the temporary erosion and sediment controls.
6. In response to the inspector's comments, note in CONTRACTOR's records CONTRACTOR's response to repair the temporary erosion and sediment controls.
7. Upon completion of the Work, provide TPDES records to OWNER.
8. File a Notice of Termination with the TCEQ once the Work has been accepted and provide OWNER with copy of Notice of Termination."

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

13.05 OWNER May Stop the Work: Add the following:

"13.05.B. The following conditions shall be deemed cause to stop work; however, work may be stopped for any other reason as listed in A and B of this section: i) Inadequate housekeeping practices, such as failure to sweep streets; ii) Spoil materials left in streets or public right of way; iii) Street closures without OWNER's authorization; iv) nonconformance with any permits obtained or required for the Project; v) Failure to comply with any provisions of the TDPEs General Permit. A notice to stop the work

based on these reasons shall not stop working days charged to the Project.”

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. Delete the last sentence of the paragraph and replace with the following:

“Progress payments on account of Unit Price Work will be based on the number of units completed except where the Unit Price Work is indicated as Lump Sum. Progress payments on Unit Price Work indicated as Lump Sum will be based on the number of units completed per the Lump Sum Schedule of Values.”

14.02 Progress Payments

A. **Applications for Payments:** Delete the first sentence of Paragraph 1 and replace with the following:

"No later than the twenty-fifth (25th) of each month, CONTRACTOR shall submit to ENGINEER for review an Application for Payment, in a form acceptable to OWNER, 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."

C.1 **Payment becomes Due:** Delete this paragraph entirely and replace with the following:

“Forty-five (45) 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.”

14.04 Substantial Completion: Add the following:

“14.04.F For water and wastewater line construction, Substantial Completion means that the Work, including all testing, has been completed and accepted and the line(s) placed into service.”

ADDITIONAL SUPPLEMENTAL CONDITIONS

ENGINEER’S LIMITATIONS

The ENGINEER expressly and completely relinquishes all power, right, control or authority to direct the order in which the work is done, to forbid the work from being done in a dangerous manner, or to exercise supervisory control, authority, or power with respect to the details, order, or safety of the work; and this power, right, control, and authority are relinquished with respect to the CONTRACTOR, his agents, employees, representatives, and subcontractors. ENGINEER

further expressly and completely relinquishes all power, right, control, or authority to supervise safety methods, procedures, or programs including the right to order or in any way compel or cause the CONTRACTOR, his agents, employees, representatives, or subcontractors to employ

the use of any safety procedure or equipment or to construct scaffolds, barricades, safety nets, warning signs, or other safety devices.

JOB SAFETY

Contractor acknowledges that ENGINEER and OWNER are relying upon CONTRACTOR to provide a safe workplace and to establish a comprehensive safety program of CONTRACTOR's choice to accomplish this goal. CONTRACTOR further represents that CONTRACTOR is experienced and knowledgeable about construction safety and applicable laws, ordinances, codes and regulations, including but not limited to OSHA regulations and CONTRACTOR does not expect nor will CONTRACTOR allow intervention by ENGINEER regarding safety on the job including, but not limited to supervision, training or education of the laborers or the choice of particular safety procedures or equipment or choice not to use particular safety methods or equipment. CONTRACTOR further agrees that due to "Engineer's Limitations" stated above, a failure by the ENGINEER to give directions or instructions during the course of the work cannot be a primary cause of injury or damage on the job site.

TESTING

Density testing on the backfill of all pipe work shall be completed at the time of installation of the pipe. Testing frequency shall be every 500 linear feet for each backfill lift or at intervals determined by the ENGINEER.

OWNER will pay for all initial density tests. Charges incurred due to test failures will be at the expense of the CONTRACTOR.

End

1. Payment

(A) Employee Certification

CONTRACTOR, Subcontractor, and Sub-subcontractor shall identify in writing, the classification agreed to by all laborers, workmen and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached Wage Rate Schedule(s). If work performed by worker is different than the classification agreed upon, the worker shall be paid the minimum wage for work performed.

(B) Classification Definitions

1. Building

Definitions for building classifications are stated in “Dictionary of Occupational Titles,” Department of Labor, 4th Edition, 1977.

2. Highway-Heavy

Definitions for Highway-Heavy classifications shall conform to “Standard Job Classification and Descriptions,” AGC of Texas Highway, Heavy, Utilities and Industrial Branch.

3. Federal Building and Highway Heavy

Definitions are stated in “Directory of Occupational Titles“, Department of Labor, 4th Edition, 1977.

(C) Minimum Wages

Workers on Project shall be paid not less than wage rates described in this section. Such wage rates shall be used throughout the Contract. If a classification is to be used which is not listed in this section, CONTRACTOR shall request such rates from the Department of Labor and forward a copy of the request and response to OWNER.

Inclusion of wage rates does not relieve CONTRACTOR from responsibility to comply with applicable State or Federal wage laws.

All mechanic and laborers working upon the Work shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29, CFR, Part 3) full wages accrues and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Highway-Heavy wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under and wage classification. Wage rates shall be posted by CONTRACTOR at site of Work in a prominent place where they can be easily seen by workers. In the event there are multiple job sites (such as in street or utility construction), wage rates shall be posted at CONTRACTOR’s office and be posted at other places where they would be most likely seen by workers.

(D) Overtime Requirements

No Contractor, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

2. Apprentices and Trainees

(A) Locally Funded Projects

Apprentices and helpers will be permitted to work as such when they are listed on a payroll as an apprentice or helper. Apprentices or helpers are to be paid a minimum of 50 percent of journeymen wages indicated. The allowable ratio of apprentices or helpers in any craft is not to exceed 2:1.

Employees who are not under the apprentice or helper program shall be paid the wage rate provided in contract for Work he actually performed.

3. Withholding of Payments

OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments which may be determined necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors on the Work the full amount of wages required by this Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this contract, OWNER may, after written notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made.

4. Payroll and Reports

Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work. Such records shall contain name and address of each such employee, his/her correct classification, rates of pay, including fringe benefit rates when applicable, daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACTOR shall make payroll records available for inspection by authorized representatives of OWNER upon written request, and shall permit such representatives to observe and/or interview employees during working hours on Work site, for such time as is required to obtain personal verification of selected payroll data. If it is apparent that there is a wage rate violation or improper classification of employees, an investigation will be conducted, and action taken as appropriate.

5. Complaints and Penalty's

CONTRACTOR's attention is directed to House Bill TX 73 RHB 560 amending Art. 5159a, V.T.C.S. relating to the payment of certain laborers, workers, and mechanics under public works contracts.

6. Area Practice

Highway Heavy Construction Wage Rates shall be used on this Work unless Building Construction Rates are included as follows:

Building Construction Wage Rates shall be used when the following conditions are met:

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be Building Construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Building Construction Wage Rates determination shall include all construction necessary to complete a facility regardless of the number of contracts involved so long as all contract awarded are closely related in purpose, time and place. Demolition or site work preparatory to Building Construction is considered a part of the building Work for wage rate determination purposes.

Incidental Building Construction shall include Highway Heavy Construction Items when the Project cost for the incidental items are less than 20 percent, except when the Building Construction is less than 4 percent of the Project cost the Highway Heavy Construction Rates will apply.

Multiple Classification

A multiple classification shall be used if Highway Heavy Construction items are more than 20 percent of the Project Cost.

WAGE RATES FOR THIS PROJECT ARE FOLLOWING IN SECTION 00831

End

"General Decision Number: TX20250007 01/03/2025

Superseded General Decision Number: TX20240007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
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If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this

wage determination, the contractor must still submit a conformance request.

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

Modification Number Publication Date
0 01/03/2025

SUTX2011-006 08/03/2011

Rates Fringes

CEMENT MASON/CONCRETE
FINISHER (Paving and
Structures).....\$ 12.56 **

ELECTRICIAN.....\$ 26.35

FORM BUILDER/FORM SETTER
Paving & Curb.....\$ 12.94 **
Structures.....\$ 12.87 **

LABORER
Asphalt Raker.....\$ 12.12 **
Flagger.....\$ 9.45 **
Laborer, Common.....\$ 10.50 **
Laborer, Utility.....\$ 12.27 **
Pipelayer.....\$ 12.79 **
Work Zone Barricade
Servicer.....\$ 11.85 **

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:
Agricultural Tractor.....\$ 12.69 **
Asphalt Distributor.....\$ 15.55 **
Asphalt Paving Machine.....\$ 14.36 **
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04 **
Concrete Pavement
Finishing Machine.....\$ 15.48 **
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87 **
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67 **
Directional Drilling
Locator.....\$ 11.67 **
Directional Drilling
Operator.....\$ 17.24 **
Excavator 50,000 lbs or
Less.....\$ 12.88 **
Excavator over 50,000 lbs...\$ 17.71 **
Foundation Drill, Truck
Mounted.....\$ 16.93 **

Front End Loader, 3 CY or Less.....	\$ 13.04 **
Front End Loader, Over 3 CY.	\$ 13.21 **
Loader/Backhoe.....	\$ 14.12 **
Mechanic.....	\$ 17.10 **
Milling Machine.....	\$ 14.18 **
Motor Grader, Fine Grade....	\$ 18.51
Motor Grader, Rough.....	\$ 14.63 **
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88 **
Roller, Asphalt.....	\$ 12.78 **
Roller, Other.....	\$ 10.50 **
Scraper.....	\$ 12.27 **
Spreader Box.....	\$ 14.04 **
Trenching Machine, Heavy....	\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....	\$ 14.00 **
Structural.....	\$ 19.29

TRAFFIC SIGNALIZATION:

Traffic Signal Installation

Traffic Signal/Light Pole Worker.....	\$ 16.00 **
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TRUCK DRIVER

Lowboy-Float.....	\$ 15.66 **
Off Road Hauler.....	\$ 11.88 **
Single Axle.....	\$ 11.79 **
Single or Tandem Axle Dump Truck.....	\$ 11.68 **
Tandem Axle Tractor w/Semi Trailer.....	\$ 12.81 **

WELDER.....\$ 15.97 **

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

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

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

WAGE DETERMINATION APPEALS PROCESS

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

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

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

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

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

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

END OF GENERAL DECISION"

PART 1 - GENERAL

1.1 Related Documents:

Drawings and general provisions of Contract, including General Conditions, Section 00700, and Supplemental General Conditions, Section 00810, and Division 1 requirements.

1.2 General

1.21 Scope of Work

- A. This section describes the Project in general and provides an overview of the extent of the Work to be performed by the CONTRACTOR. Detailed requirements and extent of Work is stated in the applicable Specification Sections and shown on the Drawings. CONTRACTOR shall, except as otherwise specifically stated herein or in any applicable part of these Contract Documents, provide and pay for all labor, materials, equipment, tools, construction equipment, and other facilities and services necessary for proper execution, testing, and completion of the Work.
- B. Any part or item of the Work which is reasonably implied or normally required to make the installation satisfactorily operable shall be performed by the CONTRACTOR and the expense thereof shall be included in the applicable unit prices or lump sum prices bid for the Work. It is the intent of these Specifications to provide the OWNER with the complete system. All miscellaneous appurtenances and other items of Work that are incidental to meeting the intent of the Specifications shall be considered as having been included in the applicable unit prices or lump sum prices bid for the Work even though these appurtenances and items may not be specifically called for in the Bid Documents.
- C. The Work shall include furnishing all tools, labor, materials, equipment, and miscellaneous items necessary for the complete construction of the project as presented in the Contract Documents and includes the following: Stormwater Reinforced Concrete Pipe Including Approximately 18"-54" Pipe, Headwalls and Appurtenances; Water Piping Including 8"-12" PVC Mains and Appurtenances; Wastewater Piping consisting of 4" - 8" PVC Pipe and Appurtenances; Pressure (Force main) Piping consisting of 6" PVC Pipe and appurtenances; Excavation, Embankment, and Paving of Streets, Curb and Gutter, Sidewalk; Sedimentation & Erosion Control; Water Quality Improvements Including Batch Detention Pond, Vegetated Filter Strips, and Various Other Site Improvements.

1.22 Location of Project

- A. Project location: Approximately 3.8 miles east of TX 281 on FM 306.

1.23 Contractor's Responsibilities

- A. Execute all Work, including excavation, installing pipe, backfill, miscellaneous concrete and testing. The Work of this Contract is generally specified in the City of Austin Standard Specifications and Special Provisions listed in the Table of Contents.
- B. Arrange for the securing of any necessary permits not obtained by the Engineer and pay for the same.
- C. Arrange for the necessary temporary water service and pay for this service and all water consumed during the construction Work.
- D. Provide adequate temporary sanitary facilities.

1.24 Easements and Rights-Of-Way

CONTRACTOR shall confine his construction operations within the limits of construction indicated on the Drawings, and shall use due care in placing construction tools, equipment, excavated materials, and pipeline materials and supplies so as to cause the least possible damage to property and interference with traffic. If the CONTRACTOR requires additional easement for his operations, the CONTRACTOR is solely responsible for acquisition and maintenance of the easement. No additional compensation will be provided by the OWNER.

1.25 Unfavorable Construction Conditions

No portion of the Work shall be constructed under conditions which adversely affect the quality or efficiency thereof, unless special means or precautions are taken by CONTRACTOR to perform the Work in a proper and satisfactory manner.

END

1. CONTRACTOR shall perform all layout work to transfer all controls for grades, lines, levels and measurements from reference points provided by OWNER'S Representative. All survey Work will be performed under supervision of a Texas Registered Professional Land Surveyor.
2. OWNER will not stake for construction and will not be on Site, except to perform quality control checks.
3. CONTRACTOR shall be required to set elevation hubs (blue tops) for subgrade and base course on centerline, at quarter points and curb lines or edge of pavement at intervals not exceeding 50 feet.
4. Upon request, OWNER'S REPRESENTATIVE will provide horizontal and vertical controls. In addition, on building projects, a boundary survey will be supplied together with a legal description of the property and all easements where Work will take place.
5. CONTRACTOR shall submit construction staking layout sheets certified by a Professional Engineer or Registered Professional Land Surveyor (as evidenced by their seal) registered in the State of Texas. CONTRACTOR shall use a qualification-based selection process consistent with the Professional Services Procurement Act, Chapter 2254 of the Texas Government Code, when securing the services of a Professional Engineer or Registered Professional Land Surveyor. It is a violation of State Law to solicit Bids for the services of a Professional Engineer or Registered Professional Land Surveyor.
 - 5.1 All Work shall be done to the lines, grades and elevations indicated on the drawings. Information concerning basic horizontal and vertical control points will be provided by BGE, Inc. These points shall be used as datum under this Contract. All work to transfer all controls for grades, lines, levels, layout and measurements shall be performed under the supervision of a Texas Registered Professional Land Surveyor, provided by the CONTRACTOR, and such work shall conform to the standards for construction staking in the most recent edition of the Texas Society of Professional Surveyors Manual of Practice for Land Surveying, Category 5, Section 1-12 inclusive. The centerline or offset centerline stakes, as applicable, will be set at no greater than fifty (50) foot intervals on both sides of the right-of-way and at points of alignment or grade changes. References to lines and grades as established by the CONTRACTOR's surveyor shall be in reference to these stake lines.
 - 5.2 The CONTRACTOR shall place grade stakes and submit construction staking layout sheets. The CONTRACTOR shall allow a minimum of ten (10) days after submission to the Owner's Representative for review of construction staking layout sheets. Construction staking layout sheets shall be in the format included at the end of this section. No Work shall be performed without Owner's Representative review and return to CONTRACTOR of construction staking layout sheets.
 - 5.3 Prior to any excavation, the CONTRACTOR shall establish the elevation to top of ground at [centerline of the pipe as well as cuts and] offset stakes at the distance deemed appropriate by the CONTRACTOR to preclude disturbance of offset stakes during construction. The CONTRACTOR shall set all blue tops for subgrade and base courses on centerline at quarter points, at curb lines or edge of pavement, and other points that may be indicated on the Drawings, all at intervals not to exceed 50 feet. In addition, the CONTRACTOR shall furnish, without charge, competent persons and such tools, stakes, and other materials as the Owner's Representative may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by the CONTRACTOR.
 - 5.4 The CONTRACTOR shall keep the Owner's Representative informed, a reasonable time in advance of the times and places at which he wishes to do Work, so that any checking deemed necessary by the OWNER may be done with minimum inconvenience to the E/A and minimum delay to the CONTRACTOR. Surveying will be coordinated between the Owner's Representative and CONTRACTOR in a manner convenient to both.

- 5.5 During Layout, CONTRACTOR shall verify elevation and alignment of tie-in to existing infrastructure. Any Work done without being properly located may be ordered removed and replaced at the CONTRACTOR's expense.
- 5.6 The CONTRACTOR shall carefully preserve all monuments, benchmarks, reference points, and stakes. In case of the destruction thereof, the CONTRACTOR shall bear the cost of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks, which must be removed or disturbed, shall be protected until properly referenced for relocation. The CONTRACTOR shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.
- 5.7 The CONTRACTOR shall satisfy himself before commencing Work as to the meaning and correctness of all control stakes, marks, etc., and no claim will be entertained by the OWNER for or on account of any alleged inaccuracies, unless the CONTRACTOR notifies the OWNER in writing before commencing the affected Work.

End See attached "Construction Staking Layout Sheet"

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

Documents related to this section will include the construction drawings and general provisions of the Contract, including the General Conditions, Section 00700, Supplemental General Conditions, Section 00810, and other Division 1 requirements.

1.2 SUMMARY

- A. This section describes the preconstruction conference and other Project related meetings which may be held on a routine schedule throughout the duration of the Project.
- B. The CONTRACTOR, or his authorized representative(s), shall attend all Project related meetings as indicated herein. The CONTRACTOR's representatives, as a minimum, shall include his Project Manager and Superintendent. Other CONTRACTOR's representatives may attend Project related meetings; however, there shall be a maximum of four (4) CONTRACTOR's representatives at any one meeting unless the ENGINEER approves a larger number.
- C. The CONTRACTOR shall provide all pertinent reports, copies of reports, etc., for each meeting as may be required by this or other sections of the Contract.

1.3 PRECONSTRUCTION CONFERENCE

A. Attendees

A preconstruction conference shall be held as soon after the award and execution of the Contract as possible and before any Work at the site is started. The conference will be held at a location selected by the Owner's Representative. The Owner's Representative shall prepare and distribute the meeting agenda, preside over the conference, and may distribute meeting minutes. The conference shall be attended by:

1. CONTRACTOR's Project Manager.
2. CONTRACTOR's Superintendent.
3. Any Subcontractors' and/or Suppliers' representatives whom the CONTRACTOR may desire to invite or whom the ENGINEER or OWNER may request to attend.
4. ENGINEER.
5. Owner's Representative
6. Other designated OWNER's representatives.
7. Utility Company representatives.

B. Meeting topics

The topics to be discussed may include, but will not be limited to, the following items:

1. Introduction of persons attending the meeting.
2. General project description, including length of contract and liquidated damages.

3. Key personnel associated with the construction (may include, but is not limited to the following):
 - CONTRACTOR's Project Manager
 - CONTRACTOR's Superintendent
 - OWNER's Representative
 - ENGINEER
4. Lines of communication and chains of command.
5. Wage and personnel records and reporting requirements.
6. Sub-contractors and suppliers
7. Submittal review and approval procedure. Submittals may include, but are not limited to the following:
 - Letter stating the name and qualifications of the CONTRACTOR's Superintendent
 - If applicable, a letter designating the Safety Representative (for general project safety) and the "Competent Person" for trench safety
 - Trench Safety Plan
 - Schedule for submittals
 - Shop drawings
 - Construction schedule (The schedule shall indicate the phases of work in which subcontractors will be participating. Sub-contractors shall be indicated by name.)
 - Payroll reports
 - Non-use of asbestos materials affidavit
8. Job and traffic safety.
9. Permits.
10. Utility coordination report.
11. Notification of property owners and others affected by the project
12. Job meetings.
13. Use of the site for construction, storage, staging, etc., and interrelationship with other contracts.
14. Laboratory testing of material requirements.
15. Inventory of materials stored on site provisions.
16. Progress estimate and payment procedure.
17. Posting of signs.
18. Project safety.
19. Review of contract -addenda, supplementary general conditions, special provisions, special specifications, and other unique project items.
20. Other

1.5 JOB MEETINGS

A. General

Job meetings shall be held as deemed necessary by the ENGINEER or OWNER or as requested by the CONTRACTOR throughout the duration of the Project. The meetings shall be held at a location selected by or approved by the Owner's Representative. The Owner's Representative, ENGINEER or CONTRACTOR, as agreed to, shall preside over the meeting and issue meeting minutes.

B. Attendees

Job meetings will be attended by the following:

1. CONTRACTOR's Project Manager, when requested to attend.
2. CONTRACTOR's Construction Superintendent.
3. Any subcontractors' and/or suppliers' representatives whom the CONTRACTOR may desire to invite or whom the ENGINEER/ARCHITECT or OWNER request to attend.
4. Owner's Representative
5. ENGINEER
6. OWNER representatives, as needed or required

C. Meeting topics

The topics will include, but not necessarily be limited to, the following subjects:

1. Review of previous meetings' notes and update of pertinent information and Project status.
2. Identification and discussion of new job related construction problems. Such discussion will be toward resolving identified problems.
3. Review work accomplished to date and establish proposed construction activities for the upcoming week(s).
4. Discuss the status of or need for change orders.
5. Check of required bonds and insurance certificates (including Workers' Compensation Insurance verification for CONTRACTOR's, Subcontractor's, and Sub-Subcontractor's employees as stated in Section 00700, General Conditions, 5.2 Workers' Compensation).
6. Status of pay requests.
7. Work in progress.
8. Review and update construction schedule.
9. Review of submittals schedule and status of submittals.
10. Other.

1.6 OTHER MEETINGS

Other meetings shall be held from time to time as may be requested by the CONTRACTOR, the ENGINEER, or the OWNER. The time and place of the meetings shall be as mutually agreed upon. The attendance at the meetings shall be as requested by the party requesting the meeting.

END

PART 1 - GENERAL

1.1 RELATED DOCUMENTS:

Drawings and general provisions of Contract, including Section 00700, "General Conditions"; Section 00810, "Supplemental General Conditions"; Division 1 requirements and City of Austin Technical Specifications and Special Provisions thereto, should be used as the related documents for this requirement.

1.2 SUMMARY

- A. This Section includes administrative and procedural requirements for submittals required for performance of the Work, including the following:
1. Contractor's construction schedule.
 2. Submittal schedule.
 3. Shop drawings.
 4. Product data.
 5. Samples.
 6. Quality assurance and quality control submittals, including calculations, mix designs and substantiating test results.
- B. Administrative Submittals: Refer to other Division 1 Sections and other Contract Documents for requirements for administrative submittals. Such submittals include, but are not limited to, the following:
1. Applications for Payment.
 2. Performance and Payment bonds.
 3. Insurance certificates.
 4. Monthly Subcontractors expense report.
 5. Non-use of asbestos affidavits
- C. Related Sections: The following Sections contain requirements that relate to this Section:
1. Section 00700, "General Conditions"; specifies requirements for submittal of the Schedule of Values.
 2. Section 00700, "General Conditions"; Section 00810, "Supplemental General Conditions"; and/or Division 1, Section 01700, "Contract Close-out" specifies requirements for submittal of Project Record Documents and warranties at project close-out.

PART 2 - PRODUCTS - not used

PART 3 - EXECUTION

3.1 SUBMITTAL PROCEDURES

Contractor shall be responsible for the following:

- A. Coordination: Coordinate preparation and processing of submittals with performance of construction activities. Transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay.
1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.

2. Coordinate transmittal of different types of submittals for related elements of the Work so processing will not be delayed by the need to review submittals or resubmittals concurrently.
 - a. The E/A reserves the right to withhold action on a submittal requiring coordination with other submittals until all related submittals are received.
 3. Processing: To avoid the need to delay installation as a result of the time required to process submittals, allow sufficient time for submittal review, including time for resubmittals.
 - a. Allow fourteen (14) calendar days for initial review. Allow additional time if the Engineer must delay processing to permit coordination with subsequent submittals.
 - b. If an intermediate submittal is necessary, process the same as the initial submittal.
 - c. Allow fourteen (14) calendar days for processing each resubmittal.
 - d. No extension of Contract Time will be authorized because of failure to transmit submittals to the E/A sufficiently in advance of the Work to permit processing.
- B. Submittal Preparation: Place a permanent label or title block on each submittal for identification. Indicate the name of the entity that prepared each submittal on the label or title block.
1. Provide a space approximately 4 inches by 5 inches (100 by 125 mm) on the label or beside the title block on Shop Drawings to record the Contractor's review and approval markings and the action taken.
 2. Include the following information on the label for processing and recording action taken.
 - a. Project name.
 - b. Date.
 - c. Name and address of the Contractor's Engineer.
 - d. Name and address of the Contractor.
 - e. Name and address of the subcontractor.
 - f. Name and address of the supplier.
 - g. Name of the manufacturer.
 - h. Number and title of appropriate Specification Section.
 - i. Drawing number and detail references, as appropriate.
- C. Number of Copies:
1. Two (2) copies of the proposed Construction schedule and subsequent revision are required.
 2. Two (2) copies of the proposed Submittal schedule and subsequent revision are required.
 3. Eight (8) copies of Shop Drawings, Product, Product Samples, Quality Assurance and Quality Control submittals are required.
- D. Submittal Transmittal: Package each submittal appropriately for transmittal and handling. Transmit each submittal from the Contractor to the E/A through the Owner's Representative using a transmittal form (An example Transmittal Form is provided at the end of this section). The E/A will not accept submittals received from sources other than the Contractor.
1. On the transmittal, record relevant information and requests for data. On the form, or separate sheet, record deviations from Contract Document requirements, including variations and limitations. Include Contractor's certification that information complies with Contract Document requirements.
 2. Number transmittals in sequence for each Series of the Specifications thus: x-xxx. The number after the dash indicates the Section of the Specifications, and the number before the dash is the sequence number of the transmittal. For example, the first item submitted related to Specification Item No. 506, "Manholes" would be labeled **1-506**, the second item submitted would be labeled **2-506**, etc. If the submittal item relates to a Special Provision or Special Specification, use **SP506** or **SS5061**, for example, to

indicate the applicable Specification Section. Identify resubmits; with a letter of the alphabet following the original sequence number, using "A" for the first resubmittal, "B" for the second resubmittal, etc. For example, the first resubmittal of the second item submitted for Specification SP506 would be labeled **2A-SP506**.

3.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

- A. Bar-Chart Schedule: Prepare a fully developed, horizontal bar-chart-type, Contractor's construction schedule. Submit initial schedule prior to or at the Pre-construction conference, and submit updated schedules as specified by the E/A, usually at each regularly scheduled Project Meeting and with each pay application.
1. Provide a separate time bar for each significant construction activity. Provide a continuous vertical line to identify the first working day of each week. Use the same breakdown of units of the Work as indicated in the "Schedule of Values."
 2. Within each time bar, indicate estimated completion percentage in 10 percent increments. As Work progresses, place a contrasting mark in each bar to indicate Actual Completion.
 3. Prepare the schedule on a sheet, or series of sheets, of stable transparency, or other reproducible media, of sufficient width to show data for the entire construction period.
 4. Secure time commitments for performing critical elements of the Work from parties involved. Coordinate each element on the schedule with other construction activities; include minor elements involved in the sequence of the Work. Show each activity in proper sequence. Indicate graphically the critical path items and the sequences necessary for completion of related portions of the Work.
 5. Indicate the phases of work in which subcontractors will be participating. Subcontractors shall be indicated by name.
 6. Coordinate the Contractor's Construction Schedule with the Schedule of Values, list of subcontracts, Submittal Schedule, progress reports, payment requests, and other schedules.
 7. Indicate substantial completion in advance of the date established for Final Completion to allow time for the E/A's procedures necessary for certification of Substantial and Final Completion.
- B. Work Stages: Indicate important stages of construction for each major portion of the Work, including submittal review, testing, and installation.
- C. Cost Correlation: At the head of the schedule, provide a cost correlation line, indicating planned and actual costs. On the line, show dollar volume of Work performed as of the dates used for preparation of applications for payment. Refer to Section 00700, "General Conditions", Article 14 Payment to Contractor and Completion for cost reporting and payment procedures.
- D. Distribution: Following response to the initial schedule submittal, print and distribute copies to the E/A, subcontractors, suppliers, and other parties required to comply with scheduled dates. Keep a copy at the Project Site at all times.
1. When revisions are made, distribute to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in construction activities.
- E. Schedule Updating: Revise the schedule after each meeting, event, or activity where revisions have been recognized or made and as requested by the E/A. Issue the updated schedule concurrently with the report of each meeting, or as requested by the E/A.

3.3 SUBMITTAL SCHEDULE

- A. Concurrently with the development of the Contractor's Construction Schedule, prepare a complete schedule of submittals. Submit the initial Submittal Schedule along with the Construction Schedule, at, or prior to, the Pre-construction Conference.
 - 1. Coordinate Submittal Schedule with the list of subcontracts, Schedule of Values, and the list of products as well as the Contractor's Construction Schedule.
 - 2. Prepare the schedule in chronological order. Provide the following information:
 - a. Scheduled date for the first submittal.
 - b. Related Section number or Specification number.
 - c. Submittal category (Shop Drawings, Product Data, Calculations, Test Results, or Samples).
 - d. Name of the subcontractor.
 - e. Description of the part of the Work covered.
 - f. Scheduled date for resubmittal.
 - g. Scheduled date for completion of the E/A's review.
- B. Distribution: Following Owner's response to the initial submittal, print and distribute copies to the Owner's Representative, E/A, Owner, subcontractors, suppliers, and other parties required to comply with submittal dates indicated. Keep copies at the Project Site at all times.
 - 1. When revisions are made, distribute to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in construction activities.
- C. Schedule Updating: Revise the schedule after each meeting or activity where revisions have been recognized or made. Issue the updated schedule concurrently with the report of each meeting, or as requested by the E/A.

3.4 SHOP DRAWINGS

- A. Submit newly prepared information drawn accurately to scale. Highlight, encircle, or otherwise indicate deviations from the Contract Documents. Do not reproduce Contract Documents or copy standard information as the basis of Shop Drawings. Standard information prepared without specific reference to the Project is not a Shop Drawing.
- B. Shop Drawings include fabrication and installation Drawings, setting diagrams, schedules, patterns, templates and similar Drawings. Include the following information:
 - 1. Dimensions.
 - 2. Identification of products and materials included by sheet and detail number.
 - 3. Compliance with specified standards.
 - 4. Notation of coordination requirements.
 - 5. Notation of dimensions established by field measurement.
 - 6. Sheet Size: Except for templates, patterns and similar full-size Drawings, submit Shop Drawings on sheets at least 8-1/2 inches by 11 inches but no larger than 24 inches by 36 inches.
 - 7. Do not use Shop Drawings without an appropriate stamp indicating action taken.

3.5 PRODUCT DATA

- A. Collect Product Data into a single submittal for each element of construction or system. Product Data includes printed information, such as manufacturer's installation instructions, catalog cuts, standard color charts, roughing-in diagrams and templates, standard wiring diagrams, applicable certifications and performance curves.

1. Mark each copy to show applicable choices and options. Where printed Product Data includes information on several products that are not required, mark copies to indicate the applicable information. Include the following information:
 - a. Manufacturer's printed recommendations.
 - b. Compliance with trade association standards.
 - c. Compliance with recognized testing agency standards.
 - d. Application of testing agency labels and seals.
 - e. Notation of dimensions verified by field measurement.
 - f. Notation of coordination requirements.
2. Do not submit Product Data until compliance with requirements of the Contract Documents has been confirmed.
3. Distribution: Furnish copies of final submittal to installers, subcontractors, suppliers, manufacturers, fabricators, and others required for performance of construction activities. Show distribution on transmittal forms.
 - a. Do not proceed with installation until a copy of the final submission of Product Data is in the Installer's possession.
 - b. Do not permit use of unmarked copies of Product Data in connection with construction.
4. Water and Wastewater Items: The Contractor shall submit descriptive information and evidence that the materials and equipment the Contractor proposes for incorporation into the Work is of the kind and quality that satisfies the specified functions and quality. **Water and Wastewater Utility Standard Products Lists (SPL)** form a part of the Specifications. Contractors may, when appropriate, elect to use products from the SPL; however, submittal to the E/A is still required. Should the Contractor elect to use any materials from these lists, each product shall be completely and clearly identified by its corresponding SPL number when making the product submittal. This will expedite the review process in which the E/A decides whether the products meet the Contract requirements and the specific use foreseen by the E/A in the design of this engineered Project. The purpose of the SPL's is to expedite review by the E/A. The SPL's should not be interpreted as being a pre-approved list of products necessarily meeting the requirements for a given construction Project. The Standard Product List current at the time of Project bidding will govern.

3.6 SAMPLES

- A. Submit full-size, fully fabricated Samples cured and finished when specified and physically identical with the material or product proposed. Samples include partial sections of manufactured or fabricated components, cuts or containers of materials, color range sets, and swatches showing color, texture, and pattern.
 1. Mount or display Samples in the manner to facilitate review of qualities indicated. Include the following:
 - a. Specification Section number and reference.
 - b. Generic description of the Sample.
 - c. Sample source.
 - d. Product name or name of the manufacturer.
 - e. Compliance with recognized standards.
 - f. Availability and delivery time.
 2. Submit Samples for review of size, kind, color, pattern, and texture. Submit Samples for a final check of these characteristics with other elements and a comparison of these characteristics between the final submittal and the actual component as delivered and installed.
 - a. Where variation in color, pattern, texture, or other characteristic is inherent in the material or product represented, submit at least 3 multiple units that show approximate limits of the variations.

- b. Refer to other Specification Sections for requirements of Samples that illustrate workmanship, fabrication techniques, details of assembly, connections, operation, and similar construction characteristics.
 - c. Refer to other Sections for Samples to be returned to the Contractor for incorporation in the Work. Such Samples must be undamaged at time of use. On the transmittal, indicate special requests regarding disposition of Sample submittals.
 - d. Samples not incorporated into the Work, or otherwise designated as the Owner's property, are the property of the Contractor and shall be removed from the site prior to Substantial Completion.
3. Maintain sets of Samples, as returned, at the Project Site, for quality comparisons throughout the course of construction.
- a. Unless noncompliance with Contract Document provisions is observed, the submittal may serve as the final submittal.
 - b. Sample sets may be used by Owner for final acceptance of the construction associated with each set.
- B. Distribution of Samples: Prepare and distribute additional sets to subcontractors, manufacturers, fabricators, suppliers, installers, and others as required for performance of the Work. Show distribution on transmittal forms.

3.7 QUALITY ASSURANCE AND QUALITY CONTROL SUBMITTALS

- A. Submit quality assurance and quality control submittals, including design data, certifications, manufacturer's instructions, manufacturer's field reports, materials test results, field testing and inspection reports, and other quality-control submittals as required under other Sections of the Specifications.
- B. Certifications: Where other Sections of the Specifications require certification that a product, material, or installation complies with specified requirements, submit a certification from the manufacturer or responsible Engineer certifying compliance with specified requirements.
- 1. Signature: Certification shall be signed by an officer of the corporation or other individual authorized to sign documents on behalf of the company.
- C. Calculations: When required in the technical specification, calculations shall be prepared and stamped by a Professional Engineer registered in the State of Texas.
- D. Concrete, Controlled Low Strength Material, Asphalt Stabilized Base and Hot Mix Asphaltic Concrete Mix Designs and Substantiating Test Data: Requirements for submittal of mix designs and substantiating test data are specified in the applicable Technical Specification Section. Each separate batch plant supplying ASB, HMAC and/or concrete shall submit mix designs to the Owner's Representative for review.

3.8 TECHNICAL SUBMITTALS REQUIRED

- A. Technical submittals required include, but are not limited to, the following list. This list is provided as an aid to the Contractor, but is not intended to be all inclusive. The Contractor shall refer to the Technical Specifications for additional requirements.

<u>Specification</u>	<u>Type of Submittal</u>
301 - Asphalts, Oils, and Emulsions	Product Data
302S - Aggregates for Surface Treatments	Material Data
340 - Hot Mix Asphaltic Concrete	Material Data, Mix Designs, Test Results
403 - Concrete for Structures	Material Data, Mix Designs, Test Results

405 - Concrete Admixtures	Product Data
408 - Concrete Joint Materials	Product Data
503S - Frames, Grates, Rings and Covers	Product Data
504S - Adjusting Structures	Material Data
505S - Encasement Pipe	Product Data
506S - Manholes	Material Data, Product Data
508S - Miscellaneous Structures and Appurtenances	Material Data, Product Data
509S - Trench Safety Systems	Sealed Trench Safety Systems Plan, Calculations
510 - Pipe	Material Data, Product Data
511S - Valves	Product Data
551 - Underdrains	Product Data
591S - Rip Rap for Slope Protection	Material Data, Mix Designs, Test Results
594S - Gabions & Revet Mattresses	Product Data
601S - Salvaging and Placing of Topsoil	Product Data
604S - Seeding for Erosion Control	Product Data
605S - Soil Retention Blanket	Product Data
Wrought Iron Fence and Gate	Material Data, Product Data
Small Diameter Valves for LPS Wastewater System	Material Data, Product Data

3.9 ENGINEER/ARCHITECT'S ACTION

- A. Except for submittals, for the record, or for information where action and return is not required, the E/A will review each submittal, mark to indicate action taken, and return within the time frame specified in Paragraph 3.1.A.3.
1. Compliance with specified characteristics is the Contractor's responsibility.
- B. Action Stamp: The E/A will stamp each submittal with a uniform, action stamp. The E/A will mark the stamp appropriately to indicate the action taken, as follows:
1. "Reviewed": the Work covered by the submittal may proceed provided it complies with requirements of the Contract Documents. Final payment depends on that compliance.
 2. "Reviewed with Comments": the Work covered by the submittal may proceed provided it complies with notations or corrections on the submittal and requirements of the Contract Documents. Final payment depends on that compliance.
 3. "Revise and Resubmit" or "Rejected": do not proceed with Work covered by the submittal, including purchasing, fabrication, delivery, or other activity. Revise or prepare a new submittal according to the notations and resubmit without delay. Repeat if necessary to obtain different action mark.
 - a. Do not use, or allow others to use, submittals marked "Revise and Resubmit" or "Rejected" at the Project Site or elsewhere where Work is in progress.
 4. Other Action: Where a submittal is for information, or for record purposes, or for special processing, or for other activity, the E/A will return the submittal marked "Record Copy", "Action Not Required" or "No Action Taken."
- C. Unsolicited Submittals: The E/A will return unsolicited submittals to the sender without action.

3.10 PREPARATION AND SUBMITTAL OF CONSTRUCTION RECORD DRAWINGS

The Owner's Representative and the Contractor's Superintendent will each maintain a set of bluelines noting any changes in ink during construction of the Project. The Owner's Representative and the Contractor's Superintendent will compare bluelines at least weekly (at a time mutually acceptable to

both) to exchange information and compare notes to ensure all items installed and changes are documented. The following is a recommended minimum of items to be noted:

GENERAL

1. Notes should be sufficiently clear to allow a draftsman to easily make the necessary changes without the need for field checks and interpretation.
2. One complete set of Construction Record blueprints will be submitted prior to the final pay request and forwarded to the Owner.
3. The Record Drawing shall indicate all changes, additions or deletions to the Design Drawings to reflect the actual systems.

WATER/WASTEWATER PROJECTS

1. Type, name and model numbers of all valves (with # of turns to open/close), air release valves, drain and fire hydrants noted at locations installed.
2. Installed locations of all assignments, appurtenances and elevations which differ from those indicated on the Drawings.
3. Pipe manufacturer type and classification noted in sufficient detail to determine location and extent of each type or classification installed.
4. Modification to any standard or special details noted.
5. Location and description of pipe closures.
6. Thrust blocking locations and restrained pipe lengths, approximate dimensions and quantities noted.
7. Location, type and quantity of all addition and deletions.
8. Changes in grade.

The above list is not intended to be complete. Any information noted which could be used for future maintenance, location and construction projects is encouraged to be noted on the blueprints.

END

PART 1 - GENERAL

1.1 Related Documents:

Drawings and general provisions of Contract, including General Conditions, Section 00700, and Supplemental General Conditions, Section 00810, and Division 1 requirements.

PART 2-PRODUCTS (NOT USED)

PART 3 -EXECUTION

3.1 Water for Construction

All water required for and in connection with the Work to be performed shall be furnished by and at the expense of the CONTRACTOR. If water is obtained from hydrants, all costs and approvals for obtaining a water meter shall be the responsibility of the CONTRACTOR. CONTRACTOR shall install a double-check valve assembly on the fire hydrant between the hydrant and the meter, to prevent backflow in the event of pressure failure. CONTRACTOR shall supply all necessary tools, hose and pipe, and shall make necessary arrangements for securing and transporting such water and shall take water in such a manner, and at such times, that will not produce a harmful drain or decrease of pressure in the water system. It shall be the CONTRACTOR's responsibility to make arrangements with the water system operator for the metering and reporting of the amount of water used, if applicable. Water shall not be used in a wasteful manner. Standard hydrant wrenches shall be used for opening and closing of fire hydrants. In no case shall pipe wrenches be used for this purpose. Temporary lines shall be removed when no longer required.

3.3 Not Used

3.4 Sanitary Facilities

CONTRACTOR shall furnish temporary sanitary facilities at the site, as provided herein, for the needs of all construction workers and others performing Work or furnishing services on the Project.

Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If toilets of the chemically treated type are used, at least one toilet shall be furnished for each 20 employees. CONTRACTOR shall enforce the use of such sanitary facilities by all personnel at the site.

3.5 Protection of Public and Private Property

CONTRACTOR shall protect, shore, brace, support and maintain all underground pipes conduits, drains, and other underground construction uncovered or otherwise affected by the CONTRACTOR's operations. All pavement, surfacing, driveways, curbs, walks, buildings, utility poles, guy wires, fences, and other surface structures affected by construction operations, together with all sod and shrubs in yards, parkways, and medians, shall be restored to their original condition, whether within or outside the easement/right-of-way. All replacements shall be made with new materials.

CONTRACTOR shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges, or other public or private property, which may be caused by transporting equipment, materials, or men to or from the Work, whether by him or his Subcontractors. CONTRACTOR shall make satisfactory and acceptable arrangements with the owner of, or the agency having jurisdiction over, the damaged property concerning its repair or replacement or payment of costs incurred in connection with the damage.

All fire hydrants and water control valves shall be kept free from obstruction and available for use at all times.

3.6 Tree and Plant Protection

All trees and other vegetation which must be removed to perform the Work shall be removed and disposed of by the CONTRACTOR; however, no trees or cultured plants shall be unnecessarily removed unless their removal is indicated on the Drawings. All trees and plants not removed shall be protected against injury from construction operations.

No tree shall be removed outside of permanent easement(s), except where authorized by the ENGINEER. Hand excavations shall be employed as necessary to prevent injury to trees. Care shall be taken with exposed roots, unearthened during construction, so that roots do not dehydrate causing tree damage.

Trees considered by the ENGINEER to have any significant effect on construction operations are indicated on the Drawings and those which are to be preserved are so indicated.

3.7 Security

CONTRACTOR shall be responsible for protection of the site, and all Work, materials, equipment, and existing facilities hereon, against vandals and other unauthorized persons.

No claim shall be made against OWNER by reason of any act of an employee or trespasser, and CONTRACTOR shall make good all damage to the OWNER's property resulting from CONTRACTOR's failure to provide security measures as specified.

Security measures shall also include such additional security fencing, barricades, lighting, and other measures as required to protect the site.

3.8 Access Roads

CONTRACTOR shall establish and maintain temporary access roads to various parts of the site as required to complete the Project. Such roads shall be available for the use of all others performing Work or furnishing services in connection with the WORK.

3.9 Parking

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 required, to avoid any need for parking personal vehicles where they may interfere with public traffic, the OWNER's operations, or construction activities.

3.10 Dust Control

Dust Control during construction of this Project shall be performed in a manner to minimize nuisance conditions and to the satisfaction of ENGINEER. No direct payment will be made for dust control. Dust Control shall be considered subsidiary work relating to various Bid items of the Contract.

3.11 Temporary Drainage Provisions

CONTRACTOR shall be responsible for providing for the drainage of stormwater and such water as may be applied or discharged on the site in performance of the Work. CONTRACTOR shall obtain ENGINEER approval for temporary drainage facilities which will handle, carry through, or divert around his Work all drainage flow, including storm flow and flows created by construction activity, to prevent silting of waterways or flooding damage to the property and adjacent property.

3.12 Erosion Control

CONTRACTOR shall prevent erosion of soil on the site and adjacent property resulting from his construction activities. Effective measures shall be initiated prior to the commencement of clearing, grading, excavation, or other operations which will disturb the natural protection.

3.13 Pollution Control

CONTRACTOR shall prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris and the substances resulting from construction activities. No sanitary wastes will be permitted to enter any drain or watercourse. No sediment, debris or other substance will be permitted to enter sanitary sewers and reasonable measures shall be taken by CONTRACTOR to prevent such materials from entering any drain or watercourse.

CONTRACTOR shall observe the rules and regulations of the State of Texas and agencies of the U.S. Government prohibiting the pollution of any lake, stream, river, or wetland by the dumping of any refuse, rubbish, dredge material, or debris therein.

CONTRACTOR is specifically cautioned that disposal of materials into any water of the State must conform to the requirements of the Texas Commission on Environmental Quality (TCEQ), and any applicable permit from the U.S. Army Corps of Engineers.

3.14 Noise Control

CONTRACTOR shall take reasonable measures to avoid unnecessary noise. Such measures shall be appropriate for the normal ambient sound level in the area during working hours. All construction machinery and vehicles shall be equipped with practical sound-muffling devices, and operated in a manner to cause the least noise consistent with efficient performance of the Work.

3.15 Fences

All existing fences affected by the Work shall be maintained by the CONTRACTOR until completion of the Work. Fences which interfere with construction operations shall not be relocated or dismantled until written permission is obtained from the owner of the fence, and the period the fence may be left relocated or dismantled has been agreed upon. Where fences must be maintained across any construction easement, adequate gates shall be installed. Gates shall be kept closed and locked at all times when not in use.

Upon completion of the Work across any tract of land, CONTRACTOR shall restore all fences to pre-construction, or to a better, condition and to their pre-construction location.

3.16 Mailboxes

CONTRACTOR shall remove, reset temporarily, and relocate permanently all mailboxes that are within construction site limits conforming to requirements of United States Postal Service. Mailboxes shall not be laid on the ground, but shall be temporarily reset the same day as removed. Payment for removing and resetting of mailboxes will not be paid for directly, but will be considered subsidiary to the various Bid items. Any damage to mail boxes or posts shall be the responsibility of the CONTRACTOR.

3.17 Emergency Facilities

Free access shall be maintained at all times to fire lanes and emergency and utility control facilities such as fire hydrants, fire alarm boxes, police call boxes, and utility valves, manholes, junction boxes, etc. In the event that it is necessary to make one of these facilities temporarily inaccessible, CONTRACTOR shall obtain approval of such action, and schedule, of Work from the OWNER. CONTRACTOR shall also provide at least 24 hours prior notice to the Fire Department, Sheriff's or Police Department, effected utility owner and local governmental agency governing the effected facility. The same entity(ies) shall be promptly notified by the CONTRACTOR when such facilities are placed back in unobstructed service.

3.18 Notification of Owners

Unless otherwise indicated, the CONTRACTOR will notify property owners abutting the right-of-way or easement of impending construction. The CONTRACTOR shall exercise diplomacy and tact with individual property owners.

3.19 Maintenance of Traffic

CONTRACTOR shall conduct his Work to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways, and walks whether public or private, the CONTRACTOR shall provide and maintain suitable safe bridges, detours or other temporary measures to accommodate public and private travel, and shall provide reasonable notice to owners of private drives before interfering with them. Such maintenance of traffic will not be required when CONTRACTOR has obtained written permission from the owner and the tenant of the private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point. A copy of the initial written permission shall be provided to the Owner's Representative.

Safety and conveyance of traffic shall be regarded as prime importance. Unless otherwise directed, all portions of roadways associated with this Project shall be kept open and provided a dust free, smooth and comfortable ride to traffic. It shall be the responsibility of the CONTRACTOR to ensure that two-way traffic may safely bypass the construction site and that access is provided to abutting private property. In making open cut street crossings, the CONTRACTOR shall not block more than one-half of the roadway at one time without approval of the OWNER. Whenever possible, CONTRACTOR shall widen the shoulder on the opposite side to facilitate traffic control. Temporary surfacing shall be provided as necessary on shoulders.

Prior to beginning Work, CONTRACTOR shall designate, in writing, a competent person who will be responsible and available on the Project site, or in the immediate area, to ensure compliance with the traffic control plan. CONTRACTOR shall provide documentation to demonstrate the sufficient training in Traffic Control for his competent person. Owner will designate a qualified person to observe implementation and who will have authority to assure compliance with the traffic control plan.

The CONTRACTOR shall perform the necessary cleanup and finishing immediately after all or a portion of the Work is completed. When the Work includes paving operations, the entire site shall be kept clean to facilitate placement of required traffic control devices. Temporary and permanent striping lay-out shall be approved by the Department of Public Works and Transportation prior to placement, when included in the Work.

(1) Detours

Where indicated on the traffic control plan CONTRACTOR shall erect and maintain detours around construction activities. Should CONTRACTOR desire to propose a detour, not already included in the traffic control plan, it shall be his responsibility to prepare a revised traffic control plan showing the detour, and obtain approval of the revised traffic control plan from the Department of Public Works, prior to implementation of the detour. The Department of Public Works has final authority as to the acceptability of any proposed revisions to the traffic control plan. The CONTRACTOR shall bear all costs for revising the traffic control plan and for maintaining the proposed detour.

(2) Barricades and lights

CONTRACTOR shall place and maintain in good condition, standard barricades at each end of the Project and at other locations where traffic is rerouted or blocked from using regular traffic lanes. Barricades and warning signs shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD). Signs, barricades, and warning devices informing the public of construction features will be placed and maintained by the CONTRACTOR, who shall be solely responsible for their maintenance. The

decision to use a particular device at a particular location as indicated in the traffic control plan or as determined by the CONTRACTOR, shall be the sole responsibility of the CONTRACTOR.

All open trenches and other excavations shall have suitable barricades, signs, and lights to provide adequate protection to the public. Obstructions, such as material piles and equipment shall be provided with similar warning signs and lights.

All barricades and obstructions shall be illuminated with warning lights from sunset to sunrise. Material storage and conduct of the Work on, or along side, public streets and highways shall cause a minimum obstruction and inconvenience of the traveling public.

END

PART 1 - GENERAL

1.1 Related Documents:

Drawings and general provisions of Contract, including General Conditions, Section 00700, and Supplemental General Conditions, Section 00810, and Division 1 requirements.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION

3.1 General

CONTRACTOR shall maintain reasonable local vehicular and pedestrian dust free traffic, including use of driveways, to proceed safely with minimum inconvenience, except during actual construction operations. CONTRACTOR provided flaggers shall assist traffic when a street is operating under a single lane. Two-way traffic shall be maintained at all other times.

CONTRACTOR shall maintain traffic by placing steel plates with Asphaltic concrete berms, temporary fill or bridging and temporary surfacing with cold-mix Asphaltic concrete paving.

Sidewalks shall not be obstructed, except by special permission of the ENGINEER. Access to private dwelling and to commercial establishments shall be provided at all times.

CONTRACTOR shall plan and execute his operations in a manner that will cause a minimum interference with traffic. The CONTRACTOR shall place and maintain in good condition, standard barricades at each end of the Project and at other locations where traffic is rerouted or blocked from using regular traffic lanes. Barricades and warning signs shall be in accordance with Texas Manual on Uniform Traffic Control Devices (MUTCD).

Signs, barricades and warning devices informing public of construction features shall be placed and maintained by the CONTRACTOR who shall be solely responsible for their maintenance.

Neither explosives nor blasting shall be permitted on this Work.

3.2 Traffic Control

3.21 It shall be sole responsibility of the CONTRACTOR to furnish, install, and maintain barricades, detour signs, warning signs, lights and all regulatory traffic control devices of the size and type specified, at locations indicated, or as directed or approved by the OWNER in accordance with the Texas Manual on Uniform Traffic Control Devices, (MUTCD), Part VI, Traffic Control for Street and Highway Construction and Maintenance Operations. A qualified Traffic Control Subcontractor shall perform all traffic control work.

3.22 Barricades placed in the roadway for the purpose of warning or directing traffic shall have Type "A" or Type "C" lights attached for use during hours of darkness.

3.23 Throughout the life of the Contract, all existing roads and Traffic Control devices included in the Work shall be maintained by the CONTRACTOR to a condition, in the opinion of the OWNER, which is equal to or better than that which existed when Work commenced. Maintenance of existing roads and devices shall take priority over all other Work items and shall be subject to a seven-day-a-week, 24-hours-per-day time frame. The CONTRACTOR shall provide a smooth and safe riding surface for all vehicles along the route of this Project. This could include, but not be limited to, small cars, motorcycles, mopeds and bicycles. If the condition of the street surface deteriorates, for any reason, CONTRACTOR shall take necessary steps to insure immediate restoration.

- 3.24 During construction of streets, drainage, and utility projects, if conditions of existing street surface require maintenance to upgrade from their state when the Work began, a separate pay item may be included in Bid; Otherwise, maintenance work will not be paid for directly but will be considered subsidiary to various Bid items of this Contract.
- 3.25 In the event that CONTRACTOR fails, in opinion of OWNER, to maintain a smooth surface for public comfort, fails to provide ingress and egress to private property, and/or does not provide and maintain proper traffic control devices, OWNER may provide these services and deduct any cost thereof, including overtime and administrative expenses, from all estimates thereafter due the CONTRACTOR. Such action by the OWNER shall not relieve the CONTRACTOR of his liability to protect the public at construction site.
- 3.26 The CONTRACTOR's Flaggers shall be required any time it is necessary for the CONTRACTOR's equipment to move into or across an open traffic lane, or at other such times as directed by the Owner's Representative. A flagger shall be utilized to aid exit of hauling equipment from open traffic lanes to the Work area, and entry of hauling equipment from Work area to open traffic lanes. Flaggers shall be dressed and conduct operations in accordance with Texas Manual on Uniform Traffic Control Devices. Flagging operations shall be the sole responsibility of the CONTRACTOR.
- 3.27 The CONTRACTOR and Subcontractors shall confine their activities to the immediate area of the construction site and provide the following:
- a. Appropriate temporary fences, barricades, and/or Metal Beam Guard Fence if required, for site work involving excavation, utility extensions, remote construction work or other circumstances involving safety of public or protection of the work in progress.
 - b. Warning lights at open trenches, excavations, etc., during hours from dusk to dawn each day. Protection of structures, utilities, sidewalks, pavements, and other facilities immediately adjacent to excavations, from damages caused by settlement, lateral movement, undermining, washout and other hazards.

3.3 Spoil Disposal

CONTRACTOR shall submit a haul route plan including a map of the proposed route(s) for the ENGINEER's approval.

3.4 Restoration

- 3.41 In order to minimize environmental and potential flood impacts, the sum of the amount of trench opened in advance of the completed line and the amount of trench left unfilled at any time shall be restricted to five hundred (500) linear feet.
- 3.42 Restoration shall be an on-going process during construction operations and shall immediately precede completion of construction of each successive section of the line, which shall not exceed 1,200 linear feet without approval of the ENGINEER.

3.5 Street Markers and Traffic Control Signs

It shall be responsibility of the CONTRACTOR to remove, preserve and reset, as required, Street Marker and Traffic Control Signs that are within construction limits to the line and heights as described in Texas Manual on Uniform Traffic Control Devices before any sidewalks or street excavation is begun. Signs shall not be laid on the ground. No payment will be made for this work but shall be considered subsidiary to the various Bid items. Any damage to signs or posts shall be paid for by the CONTRACTOR.

END

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. This Section outlines the procedure to be followed in closing out the contract.

1.02 SUBSTANTIAL COMPLETION

- A. The substantial completion date for the contract shall be established as stated in the Notice To Proceed.

1.03 FINAL CLEANING

- A. At the completion of work and immediately prior to final inspection, cleaning of the entire project shall be accomplished according to the following provisions:
1. The CONTRACTOR shall thoroughly clean, sweep, wash and polish all work and equipment provided under this Contract, including finishes. The cleaning shall leave the structures and site in a complete and finished condition to the satisfaction of the ENGINEER and OWNER.
 2. The CONTRACTOR shall remove all temporary structures and all debris, including all dirt, sand, gravel, rubbish and waste material.
 3. Should the CONTRACTOR not remove rubbish or debris or not clean the buildings and site as specified above, the OWNER reserved the right to have the cleaning done at the expense of the CONTRACTOR.
- B. Repair, patch and touch-up any marred surfaces equivalent to the specified finish and to match adjacent surfaces.
- C. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly-painted surfaces.

1.04 FINAL INSPECTION

- A. After final cleaning and restoration and upon written notice from the CONTRACTOR that the work is completed, the ENGINEER will make an inspection with the OWNER and CONTRACTOR present. Upon completion of this inspection, the ENGINEER will notify the CONTRACTOR, in writing, of any particulars in which this inspection reveals that the work is defective or incomplete.
- B. Upon receiving written notice from the ENGINEER, the CONTRACTOR shall immediately undertake the work required to remedy deficiencies and complete the work to the satisfaction of the ENGINEER.
- C. When the CONTRACTOR has corrected or completed the items as listed in the ENGINEER's written notice, he shall inform the ENGINEER, in writing, that the required work has been completed. Upon receipt of this notice, the ENGINEER, in the presence of the OWNER and CONTRACTOR, will make another inspection of the project.
- D. Should the ENGINEER find all work satisfactory at the time of this inspection, the CONTRACTOR will be allowed to make application for final payment in accordance with the provisions of the GENERAL CONDITIONS. Should the ENGINEER still find

deficiencies in work, the ENGINEER will inform the CONTRACTOR of the deficiencies in writing and will deny the CONTRACTOR's request for final payment until such time as the CONTRACTOR has satisfactorily completed the required work.

1.05 FINAL SUBMITTALS

- A. No application for final payment will be accepted until all of the following have been submitted as required in Section 01300, SUBMITTALS including, but not limited to, the following:
1. Final shop drawings
 2. Record drawings
 3. All interface information
 4. All Operation and Maintenance Manuals
 5. All Manufacturers' Certificates of Proper Installation

1.06 ACCESSORY ITEMS

- A. The CONTRACTORS shall provide to the OWNER, upon acceptance of the equipment, all special accessories required to place each item of equipment in full operation. These special accessories items include, but are not limited to, the specified spare parts, adequate oil and grease as required for the first lubrication of the equipment, initial fill-up of all chemical tanks and fuel tank, light bulbs, fuses, hydrant wrenches, valve keys, handwheels, chain operators for valve handles more than 6 feet above floor and other expendable items as required for initial startup and operation of all equipment.

1.07 GUARANTEES, BONDS and AFFIDAVITS

- A. No application for final payment will be accepted until all guarantees, bonds, certificates, licenses and affidavits required for work or equipment as specified are satisfactorily filed with the ENGINEER. The named party for all such guarantees, bonds, certificates, licenses and affidavits shall be the Comal County MUD, Comal County, and Canyon Lake WS SJWTX.

1.08 RELEASE OF LIENS OR CLAIMS

- A. No application for final payment will be accepted until satisfactory evidence of release of liens has been submitted to the OWNER as required by the GENERAL CONDITIONS.

1.09 FINAL PAYMENT

- A. Final payment will be made to the CONTRACTOR in accordance with the GENERAL CONDITIONS.

END

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

Drawings and general provisions of Contract, including General Conditions, Section 00700, and Supplemental General Conditions, Section 00810, and Division 1 Requirements.

1.2 SUMMARY

Upon completion of the Work and before acceptance and Final Payment will be made, CONTRACTOR shall clean and remove from site of the Work, surplus and discarded materials, temporary structures and debris of every kind. CONTRACTOR shall leave site of the Work in a neat and orderly condition at least equal to that which originally existed. Surplus and waste materials removed from site of the Work shall be disposed of in a permitted disposal area satisfactory to OWNER.

In the event CONTRACTOR fails or refuses to clean up and remove surplus materials and debris as above provided, OWNER may do so, or cause same to be done, at CONTRACTOR's expense and reasonable cost thereof shall be deducted from Final Payment.

PART 2 – PRODUCTS – Not used

PART 3 – EXECUTION – Not used

END