

February 24, 2026

**Addendum No. 1
to
Contract Documents and Specifications
for the Construction of
Geronimo Heights Phase 1 Site Development Plans**

This Addendum forms a part of the Contract and clarifies, corrects or modifies original Bid Documents, and any subsequent amendments thereto.

BID PROPOSAL

Latest Bid Proposal & Measurement and Basis of Payment have been provided. These changes include:

- Bid Item #10, Sidewalk, item quantity has been revised to 15,927 S.F.
- Bid Item #25, 5'x5' Area Inlet, item title has been revised to 5'x5' Grate Inlet.
- Bid Item #26, 7'x7' Area Inlet, item title has been revised to 7'x7' Grate Inlet.
- Bid Item #23, 8'x8' Junction Box, item quantity has been revised to 5 EA.
- Bid Item #30, Detention Pond Concrete Wall, item quantity has been revised to 604 C.Y.
- Bid Item #51, 1.5" SDR11 HDPE, item title has been revised to 2.0" SDR11 HDPE with a quantity of 3,028 L.F.
- Bid Item #52, 2.0" SDR11 HDPE, item title has been revised to 3.0" S SDR11 HDPE with a quantity of 3,220 L.F.
- Bid Item #53, 4.0" SCH. 80 P.V.C., item title has been revised to 6.0" SCH. 80 P.V.C. with a quantity of 278 L.F.
- Bid Item #54, 1.5" Cleanout in Manhole, item title has been revised to 2.0" Cleanout in Manhole with a quantity of 7 EA.
- Bid Item #55, 2.0" Cleanout in Manhole, item title has been revised to 3.0" Cleanout in Manhole with a quantity of 9 EA.
- Bid Item #56, Air Release Valve/Cleanout in Manhole, item was added to the bid items under Wastewater improvements.
- Bid Item #57, Adjust Manhole Castings, item quantity has been revised to 17 EA.
- Bid Item, DRIVEWAYS (CONC), item quantity has been removed from the bid.
- Bid Item #72, LIME (COM OR QK)(SLURRY), item quantity has been revised to 29 TON.
- Bid Item #73, LIME TRT (EXIST MATL)(10"), item quantity has been revised to 968 S.Y.
- Bid Item #74, PRIME COAT (MULTI OPTION), item quantity has been revised to 177 GAL.
- Bid Item #75, D-GR HMA TY-B PG64-22 (EXEMPT), item quantity has been revised to 506 TON.
- Bid Item #76, D-GR HMA TY-D PG76-22, item quantity has been revised to 98 TON.
- Bid Item #77, BONDING COURSE, item quantity has been revised to 181 GAL.
- Bid Item #78, GEOGRID BASE REINFORCEMENT (TYPE 1), item quantity has been revised to 887 S.Y.
- Bid Item #97, SOIL RET BLKT(SL_MOD_CLAY_SHORT), item quantity has been revised to 1,632 S.Y.
- Bid Item #100, Performance and Payment Bonds, item was added to bid items under Performance and Payment Bonds.
- Bid Item #103, Subtract (-) Geogrid, item was added to the bid items under Alternate Bid 'A'.

CLARIFICATIONS & MODIFICATIONS

- This is a unit price contract.
- A construction schedule must be submitted along with the bid.
- Material testing will be paid by the owner. All cancellations and retests to be paid for by contractor.
- The anticipated start date of the project is the first week of March.
- Performance and payment bonds have been added as separate line item and is part of the base bid.
- A 20% 2-year maintenance bond shall be provided to CCSUD for all water improvements. A 100% 2-year maintenance bond shall be provided to the Lone Oak MUD for all drainage and wastewater improvements.
- Construction Surveying shall be provided by the contractor.
- The SWPPP will be provided by the owner.
- Water improvements will be inspected by CCSUD. Wastewater and Drainage improvements will be inspected by Lone Oak MUD and paid by owner. Street improvements will be by third party CMT contractor and paid by owner. All cancellations and re-inspections to be paid for by contractor.
- Construction water is not available on site.
- An Excel bid form is attached.
- The work for this Project shall be substantially complete within 210 calendar days after the date the Contract Times commence and finally complete with 270 calendar days.
- The bid may be emailed or dropped off at LJA Engineering's Office.
- Water, Wastewater, and Drainage improvements are tax exempt. All other improvements are taxable.
- The quantity for Excavation/Embankment, Bid Item #2, is 264,234 S.Y. This includes all areas of right-of-way and lot grading, but excludes pond lot grading, which is accounted for separately under Detention Pond, Bid Item #29. A separate cut/fill bid item is not included.
- An exhibit called Geronimo Heights Phase One – Sidewalk Exhibit has been included with this Addendum 1 for bidding purposes.
- The base shall be installed 3 feet behind the back of curb.
- There are two pavement options available. The base bid uses the option with Geogrid and 8-inch compacted flexible limestone base. An Alternate Bid 'A' is provided where Geogrid and 8-inch compacted flexible limestone is removed and 15- inch compacted flexible limestone base is added.
- Street "Wildrose Ln" vertical alignment has been revised from station 1+00 to station 3+00.
- The detention pond will not incorporate either a geomembrane liner or a clay liner.
- The quantity for 8'x8' Junction Box, Bid Item #23, is 5 EA.
- A structural engineer is currently working on the pond concrete wall. Plans will not be available before the bid opening. An exhibit called Geronimo Heights Phase One – Pond Concrete Wall Detail has been included with this Addendum 1 for bidding purposes only.
- Storm structures are not required to be sourced from Capital Precast and may be supplied by other approved vendors.
- The cost of the 6' x 4' headwall shall be included under Detention Pond, Bid Item #29.
- Inlet protection shall be installed in accordance with the Contech Construction Products Inc. Curb Companion Inlet Protection Standard Detail.
- The 6'x4' box culvert shall be constructed using precast box.
- The berm/channel grading is reflected on the grading plan sheet 20 near the 5'x5' grate inlet and the Coyote Run Rd and Vaquero Pass intersection.
- All bottom of wall elevations have been added to the Pond Plan on sheet 13.

- All storm sewer shall be constructed in accordance with the Texas Department of Transportation (TxDOT) Standard Specifications.
- This project represents the first of three phases of the subdivision. While this phase is expected to be balanced, any surplus utility spoils shall be placed within the Phase Two area.
- Water Line B (STA 1+00) on Sheet 40 of the site plans will connect to an existing 8" water line to be constructed by Crystal Clear Special Utility District. Plans will be provided upon receipt.
- Grinder pump installation shall be limited to the installation of the wet well for each unit. The pumps, electrical connection and control panel installation will be completed by the home builder.
- Hydrostatic Testing/Chlorination and bacterial testing to be provided by contractor.
- Hydrostatic Testing of Force Mains to be provided by the contractor.
- All wastewater lines shall consist of SDR11 HDPE force main.
- Force main pipe sizes have been revised, and the associated quantities have been updated accordingly.
- All wastewater lines shall be constructed in accordance with the City of Seguin Standard Specifications.
- Wastewater Force Main service details have been replaced with EOne details.
- All manholes are proposed. Adjustment of manhole castings will be paid under separate bid items for each type of manhole, storm sewer, and force main.
- The Temporary Dewatering Skimmer detail shown on Sheet 61 is included on the Erosion & Sedimentation Control Plan (Sheet 7). A temporary pump shall be utilized to dewater the pond during construction.
- Concrete barricades are not required for the turn lane. Plastic drums shall be used as channelizing devices as shown in traffic control plan.
- Geotech recommendations within Geotech report apply to the onsite improvements. 29 tons of lime slurry shall be used for the lime treatment of turn lanes and driveways off FM 2623 as shown in turn lane plans. This is a TxDOT requirement for turn lane plans that is separate from Geotech requirements for the private streets.
- Driveways from FM 2623 to be built using same pavement sections as turn lanes.

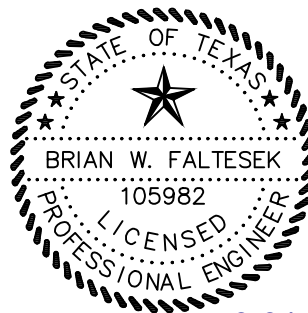
CONSTRUCTION PLANS

Latest set of plans have been provided. The changes in these plans primarily included:

- Geronimo Heights Phase 1 Site Development Plans dated 2/23/2026.



Approved by ENGINEER



2-24-2026

**CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR CONSTRUCTION OF
GERONIMO HEIGHTS, PHASE 1
PAVING, DRAINAGE, WATER, AND WASTEWATER IMPROVEMENTS**

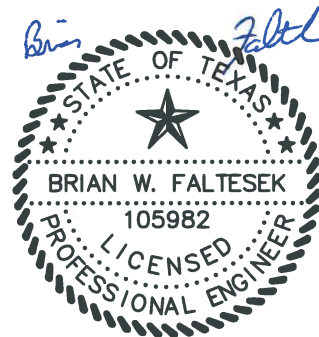
FEBRUARY 2026

Prepared for:

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San Antonio, Texas 78216
(832) 247-4321

Prepared by:

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2-24-2026

TABLE OF CONTENTS

I.	Advertisement to Bidders	3
II.	Bidder's Statement of Qualifications	4
III.	Instructions to Bidders	11
IV.	Bid Proposal	17
V.	Measurement and Basis of Payment	28
VI.	Standard Form of Agreement (Contract)	33
VII.	Performance Bond	37
VIII.	Payment Bond	39
IX.	General Conditions of the Agreement	41
X.	Supplementary Conditions	83
XI.	Technical Specifications (Notice)	104
XII.	Plans (Notice)	105
XIII.	Geotechnical Investigation (Notice)	106

I. ADVERTISEMENT TO BIDDERS

SEALED PROPOSALS addressed to Lennar for construction of the proposed improvements, in accordance with the Plans, Specifications, and Contract Documents prepared by LJA Engineering, Inc. (Engineer), will be received at the Engineer's office, 7500 Rialto Blvd, Building II, Suite 100, Austin, Texas 78735, until 2:00 p.m., February 26th, 2026 and then publicly opened and read aloud. Any Proposal received after this time will be returned unopened. Proposals shall be plainly marked with the name and address of the Bidder and the following words:

PLANS OF PROPOSED
GERONIMO HEIGHTS – PHASE 1
SITE DEVELOPMENT PLANS

The Project consists of: Geronimo Heights – Phase 1 Site Development Plans. All work must conform to Federal, State and local governmental rules and criteria.

Copies of the Plans and Specifications are on file at the Engineer's office where they may be examined without charge. Copies of the Plans and Specifications may be obtained from the Engineer on or after February 11th, 2026 for a non-refundable fee of \$100.00 per set. Checks for the Plans and Specifications shall be made payable to LJA Engineering, Inc.

A bid bond payable to Lennar in an amount not less than two percent (2%) of the Bid Proposal submitted (Bid Security), must accompany each Bid as a guarantee that, if awarded the Contract, the Bidder will, within seven (7) days of award of Contract, enter into a contract and execute bonds on the forms provided in the Contract Documents. The Owner reserves the right to reject any or all Bids and to waive any and all formalities in bidding. The Owner reserves the right to determine which Bids are lowest and are in the best interest of the Owner, and to award the Contract on this basis. The Bid Security of successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required Contract security and met the other conditions of the Notice of Award, whereupon the Bid Security will be returned. If the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract security within seven (7) days after the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of the other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the sixtieth (60th) day after the Bid opening, whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after Bid opening.

Lennar will hold a non-mandatory pre-bid conference at LJA Engineering Inc., Austin, Texas 78735, at 2:00 p.m., February 19th, 2026, to discuss the process of the project.

II. BIDDER’S STATEMENT OF QUALIFICATIONS

Preliminary Qualification Statements

This Project is located in the Comal River – Guadalupe River Watershed. The Owner requires that certain criteria be met by each Bidder interested in submitting a Bid for this work. The Bidder must be able to answer “YES” to each of the questions below to be eligible to bid on this Project. If you cannot answer “YES” to the first four questions and “No” to the last question, your Bid will not be opened or considered.

Preliminary Qualification Statements	Answer
My Organization has successfully completed at least five projects similar in cost and scope to this Project in the last five years.	
My Organization has performed work in the Comal River – Guadalupe River Watershed or in other comparable sensitive watersheds in the last three years.	
The amount of my Organization’s bonding capacity is at least \$10,000,000.	
Has your Organization been in business for a minimum of five years?	
Has your Organization ever been found in default of any contract or had a bond revoked?	

Required Supporting and Background Information

Please complete the following information in support of your qualification statements and regarding your Organization’s history and background. Please note that all questions must be answered in the format provided and that a notarized signature is required at the end of the form. Upon request, this document can be provided electronically to assist in your submittal preparation.

Bidder Qualifications:

A prospective Bidder must, at a minimum, have been in business for five (5) or more years constructing similar types of projects, and shall have the ability to carry one's own bonds. Completion of the Bidder’s Statement of Qualifications does not necessarily qualify a prospective Bidder, however, failure to complete and submit the Statement may disqualify a Bidder from consideration of Contract award. After receipt of Bids, each Bidder requested to do so shall, within three (3) days, furnish complete information pertaining to his financial conditions and such other evidence deemed necessary to show the Bidder's ability to perform satisfactorily the work on which he has bid, and within the designated

time.

The Contractor will not be permitted to assign, sell, transfer, or otherwise dispose of the Contract or any portion thereof, or his rights, title, or interest therein without the approval of the Owner and the Engineer. As a condition of this Agreement, the Contractor is required to perform the final installation of at least 60 percent of the work (based on total contract price awarded, complete in place) with personnel directly employed with the individual proprietorship, corporation or partnership which executes the Agreement. Contractor may be required to submit to Owner within three (3) days after receipt of Bids, a list of all subcontractors, suppliers, and other persons and organizations which will be performing the principal items of the work, including the percentage of the work, complete in place, to be performed by each of the named subcontractors. The Owner reserves the right to waive this condition.

The following, without limitation, are some of the causes considered sufficient for the disqualification of a Bidder and the rejection of the Bid:

- A. More than one Bid for the same work from an individual, firm, partnership, or corporation.
- B. Evidence of collusion among Bidders.
- C. Poor performance in the execution of work under previous contracts, whether for this owner or other owners.
- D. Failure to achieve reasonable progress on existing contracts.
- E. Default on previous contracts or for failure to execute contract documents after award.
- F. If sworn discovery in pending litigation discloses misconduct or willful refusal by the Bidder to comply with the subject contract or instructions of the engineer/owner.
- G. A pattern of contract law suits claiming damages or additional compensation within the past four years.
- H. Evidence of failure to pay subcontractors, suppliers, vendors, or employees.
- I. Failure to furnish complete information or providing false information on the Statement of Bidder's Qualifications.
- J. Failure to meet the minimum requirements as listed in the Bidder Qualifications section of this Bidder's Statement of Qualifications.
- K. Failure to comply with the ADVERTISEMENT TO BIDDERS.

STATEMENT OF BIDDERS QUALIFICATIONS

Bidder shall submit the Statement of Qualifications to the Engineer no later than 2:00 p.m., February 26th, 2026. All questions must be answered and the data given must be clear and comprehensive. This Statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit additional information.

1. Submitted By: _____

2. Principal office, address and telephone number: _____

3. How many years has your organization been in business as a contractor? _____

4. How many years has your organization been in business under its present name?

5. If your organization is a corporation, answer the following:
Date of incorporation: _____
State of incorporation: _____
President's name: _____
Vice President's name(s): _____

Secretary's name: _____
Treasurer's name: _____
Other Officers: _____

6. If your organization is a partnership, answer the following:
Date of organization: _____
Type of partnership (if applicable): _____

Name(s) of general partners(s): _____

7. If your organization is individually owned, answer the following:

Date of organization: _____

Name of Owner: _____

8. Has your organization ever failed to complete any work awarded to it? _____

If yes, submit details explaining fully the contract and circumstances.

Has your organization ever been awarded a bonus for early completion of work?

_____ Yes _____ No. If yes, give details of job and incentives.

9. Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers? _____ If yes, attach details.

10. Has your organization ever filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? _____ If yes, attach details.

11. Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? _____ If the answer is yes, please attach details.

12. Has your organization ever been assessed liquidated damages on any project? ____
Provide explanation of contract, circumstances and manner addressed by your organization.

13. On a separate sheet, list the major contracts your organization has completed in the past two years, giving the name of the project, owner, engineer, contract amount, date of completion and percentage of work performed by your organization.

14. On a separate sheet, list the major contracts (over \$1,000,000) your organization has in progress, giving the name of the project, owner, engineer, contract amount, percent complete, start date and scheduled completion date.

15. State the average annual dollar amount of work performed during the last five years.

16. Attach statements of background and experience of the principle members of your organization, including the officers and the person who may be the superintendent for this Contract.

17. Identify recent projects similar in type and size to this Contract. List the names and phone numbers of references for each if not previously noted above. _____

18. List all projects completed or started by your organization within the Comal River – Guadalupe River Watershed (or in other comparable sensitive watersheds) listing the owner, a contact reference, superintendent in charge and indicate whether you were the general or a sub contractor. State what jurisdictions provided and/or required inspections and observed the work performed.

19. Attach a list of equipment available for this contract.

20. Bonding Capacity: _____

Name of bonding company: _____

Name, address and telephone number of agent: _____

- 21. Attach a financial statement and name of the organization preparing the statement.
- 22. Is the attached financial statement for the identical organization named on page five?

- 23. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary). _____

- 24. Attach copies of Certificates of Good Standing (or other appropriate documentation) from the Secretary of State's Office for the company, corporation or entity.

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the ENGINEER, Lennar Homes of Texas Land and Construction, Ltd., or their agents, collectively, in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated this ____ day of _ 2026

Bidder _____

By _____

Title _____

STATE OF _____

COUNTY OF _____

Subscribed and sworn to before me this ____ day of _____ 2026, did appear ____ of _____ and affix the above noted signature.

Notary Public: _____

Printed Name: _____

My Commission Expires: _____ (Seal)

_____ being duly sworn, deposes and says that the answers to the foregoing questions and all statements therein contained are true and correct and sufficiently complete so as not to be misleading.

Signature

Date

Title

Subscribed and sworn to before me this ____ day of _____ 2026.

Notary Public: _____

Printed Name: _____

My Commission Expires: _____ (Seal)

III. INSTRUCTIONS TO BIDDERS

1. Project Identification

The project shall consist of the installation of erosion/sedimentation controls and the construction of paving, drainage, water, and wastewater improvements.

2. Copies of Bidding Documents

Copies of the Plans and Specifications are available at the office of the ENGINEER. Complete sets of Contract Documents must be used in preparing Bids; neither OWNER nor ENGINEER shall be responsible for errors or misrepresentations resulting from the use of incomplete sets. In making copies of the Contract Documents available, OWNER and ENGINEER do so only for the purpose of obtaining Bids. No other use of these documents is expressed or implied.

3. Interpretation of Documents

If any person is in doubt as to the meaning of any part of the Plans, Specifications, or other proposed Contract Documents, he may submit to the ENGINEER a written request for an interpretation. The person submitting the request will be responsible for its prompt delivery. Any interpretation of these documents by the ENGINEER will be made only in writing mailed or delivered to each person receiving a set of such documents. The OWNER will not be responsible for any other explanations or interpretations.

4. Estimates of Quantities

The quantities listed in the PROPOSAL shall be considered as approximate and will be used only for comparison of bids. Payment to the CONTRACTOR will be made only for the actual quantities of work performed or materials furnished in accordance with the contract. The quantities may be increased or decreased as provided in the General Conditions of Agreement without in any way invalidating the unit bid prices.

5. Examination of Contract Documents and Site

It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider Federal, State, and Local laws and regulations that may affect cost, progress, performance, or furnishing of the Work; (d) study and carefully correlate Bidder's observations with the Contract Documents; and (e) notify ENGINEER of all conflicts, errors, or discrepancies in the Contract Documents. The location and depths of existing utilities shown on the plans are approximate and based on information and data furnished to OWNER and ENGINEER by others. OWNER and ENGINEER do not assume responsibility for the accuracy or completeness thereof. The CONTRACTOR shall be responsible for field verification of existing utilities prior to construction.

6. Preparation of Bid

Bidders shall use the Proposal Documents included in the Contract Documents. All blanks on the Proposal Documents must be completed in ink or typewritten, and Proposal shall acknowledge receipt of all Addenda where provided. Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature. Names shall be typed or printed below the signature.

7. Interpretation of Quoted Prices

In case of a discrepancy between the unit price and the total price in a proposal, the unit prices shall prevail and the total price shall be calculated at the unit price bid. In case of a discrepancy between the written amount and figure amount of the bid price, the written amount shall prevail.

8. Substitute or "Or Equal" Items

The Contract, if awarded, shall be on the basis of materials and equipment shown in the Contract Documents without consideration of possible substitute or "or equal" items. Where "or equal" is indicated on the Plans and Specifications, the "or equal" conditions of the General Conditions shall apply with modifications, if any, in the Supplementary Conditions. Applications for substitute or "or equal" items will not be considered by the OWNER or ENGINEER until after the Effective Date of the Agreement.

9. Change in Location

No changes in alignments or locations are contemplated; however, should changes be necessary, the OWNER reserves the right to make such changes, and unless it can be clearly shown that such changes work an undue hardship on the CONTRACTOR, no extra compensation will be allowed.

10. Insurance and Bonds

When CONTRACTOR delivers the executed Agreement to OWNER, CONTRACTOR shall also deliver to OWNER evidence of such insurance and contract security as required in the General and Supplementary Conditions.

11. Measurement and Payment

All work and material in this Contract are to be paid for through estimates prepared by the CONTRACTOR submitted monthly and subject to approval of the OWNER and ENGINEER. The pay estimates shall be based on the Unit Prices and Lump Sum bid items as listed in the Proposal. No payment for materials on hand will be allowed without prior approval by OWNER. Errors in pay estimates prepared by the CONTRACTOR may result in payment delays at no expense to the OWNER or ENGINEER. The CONTRACTOR shall submit to the ENGINEER no later than the fifth day of the month a statement showing the total value of work performed up to and including the last day of the prior month. Retainage not exceeding 10% shall be withheld from payment until acceptance by the OWNER and/or appropriate governmental agency.

12. Bid Security

- 12.1 Each Bid must be accompanied by Bid Security made payable to OWNER in an amount not less than two percent (2%) of the Bid submitted in the form of a cashier's check drawn on a bank in Guadalupe County or counties bordering Guadalupe County and/or as required by the invitation and/or advertisement to bidders. The OWNER reserves the right to waive this requirement.
- 12.2 The Bid Security of successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required Contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract security within seven (7) days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of the other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the sixtieth (60th) day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after Bid opening.

13. Submission of Bids

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bidders and shall be enclosed in a opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Bids that are not received by the time and at the location specified in the bidding documents, will be returned unopened to the Bidder.

As a condition of this Agreement, the CONTRACTOR is required to perform the final installation of at least 60 percent of the work (based on total contract price awarded, complete in place) with personnel directly employed with the individual proprietorship, corporation or partnership which executes this Agreement. CONTRACTOR may be required to submit to OWNER within three (3) days after receipt of bids, a list of all subcontractors, suppliers, and other persons and organizations which will be performing the principal items of the work, including the percentage of the work, complete in place, to be performed by each of the named subcontractors. The OWNER reserves the right to waive this condition.

14. Modification and Withdrawal of Bids

- 14.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- 14.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its

Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. Opening of Bids

Bids will be opened and read aloud publicly at the place where Bids are to be submitted. An abstract of the amounts of the base Bids and major alternatives (if any) will be made available to Bidders after the opening of Bids.

16. Bids to Remain Subject to Acceptance

All bids will remain subject to acceptance for sixty days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. Award of Contract

- 17.1 OWNER reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. OWNER also reserves the right to waive all formalities not involving price, time or changes in the Work. 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. Discrepancies between words or figures will be resolved in favor of the words.
- 17.2 In evaluating Bids, OWNER will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 17.3 OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for the Work. OWNER also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 17.4 OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER's satisfaction.
- 17.5 If the contract is to be awarded, it will be awarded to the responsible Bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the Project.

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

18. Signing of Agreement

When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within seven (7) days thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds and insurance certificate(s). Within twenty (20) days thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR. CONTRACTOR will have ten (10) days to commence construction once Notice to Proceed has been issued.

19. Prices of Materials and Sales Tax

The total value of the work equals the total of the Incorporated Material, Non-Incorporated Material, and all other costs and fees, each of which shall be billed separately by CONTRACTOR to OWNER:

The amounts set forth above are current estimates by CONTRACTOR of the amounts that will be determined during the progress of the Work. The final progress billings from CONTRACTOR to OWNER shall reflect the actual amounts expended for the items enumerated in (a), (b), and (c), below.

The Incorporated Material shall be exempt from sales and use tax in that the Work is being performed for the OWNER.

Without prior written approval of OWNER to the contrary, CONTRACTOR shall separate: (a) that part of the billing attributable to Incorporated Material [(i.e., materials to be incorporated into the Work)(which billing shall not exceed the actual costs of such materials to the Contract, or any Subcontractor, as the case may be)], (b) that part of the billing attributable to Non-Incorporated Material, and (c) that part of the billing attributable to their costs and fees. CONTRACTOR must obtain a Texas sales tax permit.

By virtue of the tax-exempt status of the Work, CONTRACTOR shall neither (i) collect sales or use tax from OWNER or (ii) pay sales tax to any Subcontractor or materialman with respect to Incorporated Material (CONTRACTOR will execute and deliver a resale certificate for such Incorporated Material to the Subcontractor or materialman who supplied CONTRACTOR with the Incorporated Material). When CONTRACTOR purchases, rents, or leases Non-Incorporated Material, CONTRACTOR or Subcontractor must pay sales or use tax at the time of purchase, rental, or lease of such Non-Incorporated Material. All subcontracts shall provide that the Subcontractor must comply with the provisions of this paragraph. For purposes of this section, the term Subcontractor shall include a sub-subcontractor and materialman as appropriate in context. All sub-subcontractors shall be subject to the same separated contract provisions that are applicable to CONTRACTOR.

Without prior written approval of OWNER to the contrary: (a) all Subcontracts entered into by and between CONTRACTOR and any Subcontractor, and (b) all sub-subcontracts entered into by and between the Subcontractors and Sub-subcontractors relating to the Work shall be separated contracts and final billings by the Subcontractors or Sub-subcontractors as applicable shall separate: (i) that part of the billing attributable to Incorporated Material (which billing shall not exceed the actual

cost of such materials to the Subcontractor or Sub-subcontractor, as the case may be); (ii) that part of the billing attributable to Non-Incorporated Material; and (iii) that part of the billing attributable to other costs and fees. All Subcontractors and Sub-subcontractors must obtain a Texas sales tax permit.

All Subcontracts shall provide that when the Subcontractor purchases Incorporated Material, such Subcontractor will execute and deliver a resale certificate for such Incorporated Material to the Sub-subcontractor or materialman who supplied Subcontractor with the Incorporated Material. As a result, Subcontractor will not have to pay sales or use tax on such Incorporated Material at the time of purchases. When Subcontractor invoices Contractor for the Cost of Incorporated Material, contractor will execute and deliver a resale certificate for such Incorporated Material to Subcontractor, and Subcontractor shall not collect sales or use tax on the cost of such Incorporated Material. When any Subcontractor purchases, rents, or leases Non-Incorporated Material, such Subcontractor must pay sales or use tax at the time of purchase, rental, or lease of such Non-Incorporated Material.

All Sub-subcontracts between a Subcontractor and a Sub-subcontractor shall be subject to the same separated contract provisions that are applicable to Subcontracts between a CONTRACTOR and a Subcontractor.

IV. BID PROPOSAL

The undersigned, in compliance with the Instructions to Bidders for **GERONIMO HEIGHTS – PHASE 1 SITE DEVELOPMENT PLANS**, having examined the plans and specifications with related documents and having carefully read same and having visited the site surrounding the construction of the proposed work, hereby propose to furnish all superintendence, labor, hauling, materials, equipment, apparatus, machinery, tools, and supplies, and to construct the project in accordance with the Contract Documents within the time set forth herein and at the prices stated below:

Paving Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
1	55	AC	<u>Clearing and Grubbing,</u> <u>Complete and in place, per acre,</u> For _____ dollars And _____ cents		
2	264,234	S.Y.	<u>Excavation/Embankment,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
3	24,202	S.Y.	<u>Subgrade Preparation,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
4	24,202	S.Y.	<u>8" Compacted Flexible Limestone Base Material,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
5	24,202	S.Y.	<u>Lime Stabilization,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
6	24,202	S.Y.	<u>Geogrid,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
7	16,849	S.Y.	<u>3" Hot Mix Asphaltic Concrete,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
8	12,610	L.F.	<u>Standard Curb and Gutter,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		
9	359	S.Y.	<u>Concrete Valley Gutter,</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		

10	15,927	S.F.	<u>Sidewalk,</u> <u>Complete and in place, per square foot,</u> For _____ dollars And _____ cents		
11	36	EA.	<u>Sidewalk Ramps,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
12	4	EA.	<u>OSSF Driveway,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
13	1	L.S.	<u>Signage and Striping,</u> <u>Complete and in place, per lump sum,</u> For _____ dollars And _____ cents		
14	2	EA.	<u>Sawcut and Tie into Existing Pavement,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
15	1	EA.	<u>Emergency Access Gate,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
16	1	L.S.	<u>Surveying,</u> <u>Complete and in place, per lump sum,</u> For _____ dollars And _____ cents		
Paving Improvements					

Drainage Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
17	844	L.F.	<u>24" Class III RCP,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		
18	489	L.F.	<u>36" Class III RCP,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		
19	2,330	L.F.	<u>48" Class III RCP,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		
20	1,053	L.F.	<u>6"x4' Reinforced Concrete Box,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		

21	1	EA.	<u>4' x 4' Junction Box,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
22	1	EA.	<u>6' x 6' Junction Box,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
23	5	EA.	<u>8' x 8' Junction Box,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
24	24	EA.	<u>15' Curb Inlet,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
25	1	EA.	<u>5'x5' Grate Inlet,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
26	1	EA.	<u>7'x7' Grate Inlet,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
27	7	EA.	<u>Adjust Manhole Castings,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
28	859	L.F.	<u>Berm/Channel,</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
29	1	L.S.	<u>Detention Pond,</u> <u>Complete and in place, per lump sum,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
30	604	C.Y.	<u>Detention Pond Concrete Wall,</u> <u>Complete and in place, per cubic yard,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
31	4,467	L.F.	<u>Trench Safety System,</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		

32	1	L.S.	<u>Surveying,</u> <u>Complete and in place, per lump sum,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
Drainage Improvements					

Water Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
33	3,371	L.F.	<u>8" DR-18 C-900 P.V.C.,</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
34	3,100	L.F.	<u>8" DR-18 C-900 P.V.C. (Restrained Joint Pipe),</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
35	167	L.F.	<u>6" Class 350 DIP (FH Leads),</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
36	198	L.F.	<u>24" DR-25 P.V.C. Encasement Pipe,</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
37	90	L.F.	<u>24" D.I. Encasement Pipe,</u> <u>Complete and in place, per linear foot,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
38	49	EA.	<u>8" Gate Valve,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
39	16	EA.	<u>6" Gate Valve,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
40	5	EA.	<u>1" Air Release/Vacuum Valve (CAARV),</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
41	6	EA.	<u>Flush Valve,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		
42	6	EA.	<u>Rise Valve Castings,</u> <u>Complete and in place, per each,</u> <u>For _____ dollars</u> <u>And _____ cents</u>		

43	16	EA.	<u>5 1/4" Fire Hydrant,</u> Complete and in place, per each, For _____ dollars And _____ cents		
44	1	EA.	<u>Connect to Existing Waterline,</u> Complete and in place, per each, For _____ dollars And _____ cents		
45	19	EA.	<u>Long Double Water Service,</u> Complete and in place, per each, For _____ dollars And _____ cents		
46	2	EA.	<u>Long Single Water Service,</u> Complete and in place, per each, For _____ dollars And _____ cents		
47	27	EA.	<u>Short Single Water Service,</u> Complete and in place, per each, For _____ dollars And _____ cents		
48	1	L.S.	<u>Cast Iron Fittings,</u> Complete and in place, per lump sum, For _____ dollars And _____ cents		
49	6,638	L.F.	<u>Trench Safety System,</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
50	1	L.S.	<u>Surveying,</u> Complete and in place, per lump sum, For _____ dollars And _____ cents		
Water Improvements					

Wastewater Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
51	3,028	L.F.	<u>2.0" SDR11 HDPE Force Main,</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
52	3,220	L.F.	<u>3.0" SDR11 HDPE Force Main,</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
53	278	L.F.	<u>6.0" SCH. 80 P.V.C. Force Main Sleeves,</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		

54	7	EA.	<u>2.0" Cleanout in Manhole,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
55	9	EA.	<u>3.0" Cleanout in Manhole,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
56	1	EA.	<u>Air Release Valve/Cleanout in Manhole,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
57	17	EA.	<u>Adjust Manhole Castings,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
58	67	EA.	<u>Single Service – Force Main,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
59	67	EA.	<u>EOne Grinder Pump Station,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		
60	6,239	L.F.	<u>Trench Safety System,</u> <u>Complete and in place, per linear foot,</u> For _____ dollars And _____ cents		
61	1	L.S.	<u>Surveying,</u> <u>Complete and in place, per lump sum,</u> For _____ dollars And _____ cents		
Wastewater Improvements					

Erosion/Sedimentation Control Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
62	161,567	S.Y.	<u>Revegetation (Hydromulch Seeding with Topsoil & Watering for Temporary and Permanent Revegetation),</u> <u>Complete and in place, per square yard,</u> For _____ dollars And _____ cents		
63	2	EA.	<u>Stabilized Construction Entrance,</u> <u>Complete and in place, per each,</u> For _____ dollars And _____ cents		

64	14,614	L.F.	<u>Silt Fence,</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
65	2	EA.	<u>Concrete Washout Area,</u> Complete and in place, per each, For _____ dollars And _____ cents		
66	26	EA.	<u>Inlet Protection,</u> Complete and in place, per each, For _____ dollars And _____ cents		
67	1	L.S.	<u>Maintain Temporary Controls,</u> Complete and in place, per lump sum, For _____ dollars And _____ cents		
68	1	L.S.	<u>Surveying,</u> Complete and in place, per lump sum, For _____ dollars And _____ cents		
Erosion/Sedimentation Control Improvements					

Turn Lane Improvements

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
69	6	STA	<u>PREPARING ROW,</u> Complete and in place, per station, For _____ dollars And _____ cents		
70	8	C.Y.	<u>EXCAV (ROADWAY),</u> Complete and in place, per cubic foot, For _____ dollars And _____ cents		
71	222	C.Y.	<u>EMBANK (FNL)(OC)(TY B),</u> Complete and in place, per cubic foot, For _____ dollars And _____ cents		
72	29	TON	<u>LIME (COM OR QK)(SLURRY),</u> Complete and in place, per ton, For _____ dollars And _____ cents		
73	968	S.Y.	<u>LIME TRT (EXIST MATL)(10"),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
74	177	GAL	<u>PRIME COAT (MULTI OPTION),</u> Complete and in place, per gallon, For _____ dollars And _____ cents		

75	506	TON	<u>D-GR HMA TY-B PG64-22 (EXEMPT),</u> Complete and in place, per ton, For _____ dollars And _____ cents		
76	98	TON	<u>D-GR HMA TY-D PG76-22,</u> Complete and in place, per ton, For _____ dollars And _____ cents		
77	181	GAL	<u>BONDING COURSE,</u> Complete and in place, per gallon, For _____ dollars And _____ cents		
78	887	S.Y.	<u>GEOGRID BASE REINFORCEMENT</u> <u>(TYPE 1),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
79	2	MO	<u>BARRICADES, SIGNS AND TRAFFIC</u> <u>HANDLING,</u> Complete and in place, per month, For _____ dollars And _____ cents		
80	16	HR	<u>TMA (MOBILE OPERATION),</u> Complete and in place, per hour, For _____ dollars And _____ cents		
81	26	S.F.	<u>ALUMINUM SIGNS (TY-A),</u> Complete and in place, per square foot, For _____ dollars And _____ cents		
82	4	EA.	<u>IN SM RD SD SUP&AM</u> <u>TY10BWG(1)SA(P),</u> Complete and in place, per each, For _____ dollars And _____ cents		
83	33	L.F.	<u>REFL PAV MRK TY I</u> <u>(W)8"(DOT)090MIL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
84	370	L.F.	<u>REFL PAV MRK TY I</u> <u>(W)8"(SLD)(090MIL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		

85	12	L.F.	<u>REFL PAV MRK TY I</u> <u>(W)12"(SLD)(090MIL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
86	2	EA.	<u>REFL PAV MRK TY I</u> <u>(W)(ARROW)(090MIL),</u> Complete and in place, per each, For _____ dollars And _____ cents		
87	2	EA.	<u>REFL PAV MRK TY I</u> <u>(W)(WORD)(090MIL),</u> Complete and in place, per each, For _____ dollars And _____ cents		
88	502	L.F.	<u>REFL PAV MRK TY I</u> <u>(W)4"(SLD)(090MIL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
89	44	L.F.	<u>REFL PAV MRK TY I</u> <u>(Y)6"(SLD)(090MIL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
90	19	EA.	<u>REFL PAV MRK TY I-C,</u> Complete and in place, per each, For _____ dollars And _____ cents		
91	736	L.F.	<u>ELIM EXT PM & MRKS (4"),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
92	1,632	S.Y.	<u>FURN & PLACE TOPSOIL (5"),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
93	1,632	S.Y.	<u>DRILL SEED (PERM_RURAL_CLAY),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
94	1,632	S.Y.	<u>DRILL SEED (TEMP_WARM_COOL),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
95	0.11	TON	<u>FERTILIZER,</u> Complete and in place, per ton, For _____ dollars And _____ cents		

96	50	TGL	<u>VEGETATIVE WATERING,</u> Complete and in place, per thousand gallons, For _____ dollars And _____ cents		
97	1,632	S.Y.	<u>SOIL RET</u> <u>BLKT(SL MOD CLAY SHORT),</u> Complete and in place, per square yard, For _____ dollars And _____ cents		
98	612	L.F.	<u>TEMP SEDMT CONT FENCE (INSTALL),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
99	612	L.F.	<u>TEMP SEDMT CONT FENCE</u> <u>(REMOVE),</u> Complete and in place, per linear foot, For _____ dollars And _____ cents		
Turn Lane Improvements					

Performance and Payment Bonds

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
100	1	L.S.	<u>Performance and Payment Bonds,</u> Complete and in place, per lump sum, For _____ dollars And _____ cents		
Total Amount Bid – Performance and Payment Bonds					\$

Bid Proposal Summation

PAVING IMPROVEMENTS	
DRAINAGE IMPROVEMENTS	
WATER IMPROVEMENTS	
WASTEWATER IMPROVEMENTS	
EROSION/SEDIMENTATION CONTROL IMPROVEMENTS	
TURN LANE IMPROVEMENTS	
PERFORMANCE AND PAYMENT BONDS	
TOTAL "BASE BID" (ITEMS 1 - 100)	

Alternate Bid "A"

Item No.	Quantity	Unit	Item Description and Total Written Unit Price	Unit Price	Amount
101	24,202	S.Y.	<u>15" Compacted Flexible Limestone Base</u> <u>Material,</u> Complete and in place, per square yard, For _____ dollars And _____ cents		

V. MEASUREMENT AND BASIS OF PAYMENT

Final payment will be made only for work performed and accepted. The CONTRACTOR shall verify quantities before ordering materials. Unless stated otherwise in the Contract Documents, it is understood that all payments made are for finished work and include all superintendence, labor, materials, equipment, hauling, constructing and completing the item on which payment is made. All materials and work for which a specific pay item is not provided shall be considered subsidiary to the other items for which they form a component part.

Item No. 1, Clearing and Grubbing, when so called for in the proposal, will be paid for at unit bid price, per acre, which price shall be considered full compensation for clearing, grubbing, and removing vegetation, structures, debris and other above-ground or buried obstructions, including disposal of material, and furnishing all materials, equipment, tools, labor, hauling, and incidentals necessary to complete the work.

Item No. 2, Excavation and Embankment, when so called for in the proposal, will be paid for at unit bid price, per square yard, which price shall be considered full compensation for rough-cutting of streets and adjacent embankment/cut slopes to subgrade, removal of all spoil, shaping, compacting, and finishing of side slopes in conformity with required grades and typical cross-sections indicated on the plans or as directed by the ENGINEER, and furnishing all equipment and materials (including borrow material) necessary to complete items including labor and other incidentals necessary thereto. All rough-cut and embankment shall be completed to within 0.2 feet of finished subgrade, and shall meet recommendations of the geotechnical study. Includes all grading within right of way and adjacent to right-of-way. This includes the 2% slope area from pack of curb to right-of-way

Item No. 3, Subgrade Preparation, when so called for in the proposal, will be paid for at the unit bid price, per square yard, for the final grading of the right-of-way and adjacent embankment/cut slopes, ditches and berms after utilities are installed by others, to include furnishing all materials necessary to bring subgrade to limits indicated on the plans and as staked on the ground; and furnishing all equipment, tools, labor and incidentals necessary to complete such work.

Item Nos. 4, 101, and 102, Flexible Limestone Base Material, when so called for in the proposal, will be paid for at the unit bid price, per square yard, at the compacted thickness specified, as typically calculated from 36-inches behind the back of curb, and by the horizontal length of the street, which price shall be full compensation for furnishing all materials, labor, hauling, placing, and compacting of all materials, and all other items necessary or incidental thereto.

Item No. 5, Lime Stabilization, when so called for in the proposal, will be paid for at the unit bid price, per square yard, for providing the required lime stabilization to the proper depth and amount, includes furnishing all materials and equipment, tools, labor and incidentals necessary to complete such work. Geotechnical Engineer to verify if Lime treatment is required.

Item Nos. 6, and 103, Geogrid, when so called for in the proposal, will be paid for at the unit bid price, per square yard, for providing the required geogrid to the proper depth and amount, includes furnishing all materials and equipment, tools, labor and incidentals necessary to complete such work. Geotechnical Engineer to verify if geogrid is required.

Measurement and Basis of Payment

Item No. 7, Hot Mix Asphaltic Concrete, for the type specified, when so called for in the proposal, will be paid for at the unit bid price, per square yard, as calculated from the lip of the curb/gutter to the lip of the opposite curb/gutter, and by the horizontal length of the street, which price shall be full compensation for furnishing all materials, labor, hauling, placing, and compacting of all materials, and all other items necessary or incidental thereto.

Item No. 8, Standard Curb and Gutter, when so called for in the proposal, will be paid for at the unit bid price, per linear foot, which price shall be considered full compensation for excavation, preparing the subgrade, for furnishing reinforcing steel, concrete, dowels, expansion joint material, curing material, backfilling, moisture barrier, and for all other materials, manipulations, labor, tools, equipment, and incidentals necessary to complete the work.

Item No. 9, Concrete Valley Gutter, when so called for in the proposal will be paid for at the unit bid price per square yard, as specified, which shall be considered full compensation for furnishing and placing all materials necessary to complete the work. This item will include any concrete, reinforcing, excavation, backfill, and any incidentals to complete the work.

Item No. 10, Sidewalk, when so called for in the proposal will be paid for at the unit bid price per square foot, as specified, which shall be considered full compensation for furnishing and placing all materials necessary to complete the work. This item will include any concrete, reinforcing, excavation, backfill, and any incidentals to complete the work.

Item No. 11, Sidewalk Ramps, when so called for in the proposal, will be paid for at the unit contract price per each, which price shall be considered full compensation for excavation, preparing the subgrade, for furnishing and placing all materials, including cushion material, all reinforcement, joints, expansion joint material, and for any other materials, manipulations, labor, tools, equipment, finishing, curing and incidentals necessary to complete the work.

Item No. 12, OSSF Driveway, when so called for in the proposal, will be paid for at the unit contract price per each, which price shall be considered full compensation for excavation, preparing the subgrade, for furnishing and placing all materials, including cushion material, all reinforcement, joints, expansion joint material, and for any other materials, manipulations, labor, tools, equipment, finishing, curing and incidentals necessary to complete the work.

Item No. 13, Signage and Striping, when so called for in the proposal, will be paid for at unit bid price, per lump sum, which price shall be considered full compensation for all materials and labor necessary to fabricate and install the signs and to install thermoplastic reflectorized pavement markings, including all incidentals to complete the work. This item includes street name signs, traffic control signs, and stop signs.

Item No. 14, Saw Cut and Tie into Existing Pavement, when so called for in the proposal will be paid for at the unit bid price, per each, which price shall be considered full compensation for providing materials, manipulations, labor, tools, equipment, and incidentals necessary to complete the work.

Item No. 15, Emergency Access Gate, when so called for in the proposal will be paid for at the unit bid price, per each, which price shall be considered full compensation for providing materials, manipulations, labor, tools, equipment, and incidentals necessary to complete the work.

Measurement and Basis of Payment

Item Nos. 16, 32, 50, 61, and 68, Surveying, when so called for in this proposal, will be paid for at a lump sum, which price shall include all construction staking required to place drainage, water, wastewater, paving, and erosion/sedimentation control improvements in as designed vertically and horizontally.

Item Nos. 17, 18, and 19 Drainage Pipe, when so called for in the proposal, will be paid for at the unit bid price, per linear foot, for the size, type and class specified, which price shall be considered full compensation for all material, labor, tools, equipment and incidentals necessary to complete the work including hauling, excavation, bedding material, concrete blocking for supporting and reinforcing bends, fittings, plugs, flowable fill, pipe coatings, disposal of surplus materials, backfilling, and cleanup. Measurement shall be the horizontal distance along the centerline of the pipe or culvert.

Item Nos. 20, 21, 22, 23, 24, 25, and 26, Box Culverts, Junction Boxes, and Inlets, when so called for in the proposal will be paid for at the unit bid price, as specified, which shall be considered full compensation for furnishing and placing all materials, and incidentals necessary to complete the work. This item will include any concrete, mortared, reinforcing, castings, excavation, backfill, and any incidentals to complete the work.

Item Nos. 27, and 57, Adjust Manhole Castings, when so called for in the proposal will be paid for at the unit bid price per each, as specified, including all materials, labor and all work complete and in place.

Item No. 28, Berm/Channel, when so called for in the proposal will be paid for at the unit bid price, per linear foot, which price shall be considered full compensation for completing all work including revegetation, restoration and any excavation and/or fill associated with this work.

Item No. 29, Detention Pond, when so called for in the proposal, will be paid for at unit bid price, per lump sum, which price shall be considered full compensation for clearing and grubbing, hauling, disposal of spoil, excavation, embankment, 3"x5" rock drives, headwalls, pond driveway, backfilling, spillway, rock riprap, topsoil, restoration, labor, tools, clean up, restoration, equipment and incidentals necessary to complete the work. Pond retaining walls are under separate bid item no. 30.

Item No. 30, Detention Pond Concrete Wall, when so called for in the proposal will be paid for at the unit bid price per vertical square foot above ground, as specified, which shall be considered full compensation for furnishing and placing all materials necessary to complete the work. This item will include any concrete, reinforcing, excavation, backfill, and any incidentals to complete the work.

Item Nos. 31, 49, and 60, Trench Safety System, when so called for in the proposal, will be paid for at the unit bid price, per linear foot, which price shall be considered full compensation for furnishing all materials, equipment, tools, labor, and incidentals necessary to provide a Trench Safety Plan sealed by a Professional Engineer registered in the State of Texas and implement trench safety measures for all excavated areas required by the project. Measurement shall be the horizontal distance along the centerline of the trench.

Item Nos. 33, 34, 35, 36, and 37, Water pipe, when so called for in the proposal, will be paid for at the unit bid price, per linear foot, for the size, type and class specified. Measurement shall be the horizontal distance along the centerline of the pipe. The bid price shall include excavation, thrust blocking, joint restraint, tying into existing water lines, bedding material, backfilling, disposal of surplus material, pipe coatings, tracer tape, miscellaneous cast iron fittings such as bends, tees, crosses, reducers, glands, bolts, and gaskets, etc., sterilization and testing of water lines, and cleanup.

Measurement and Basis of Payment

Item Nos. 38, 39, 40, and 41, Valves, including boxes and covers, when so called for in the proposal, will be paid for at the unit bid price, per each, for the size, type and class specified, including all materials, labor and all work complete and in place.

Item No. 42, Raise Valve Castings, when so called for in the proposal will be paid for at the unit bid price per each, as specified, including all materials, labor and all work complete and in place.

Item No. 43, Fire Hydrant, when so called for in the proposal, will be paid for at the unit bid price, per each, for the size, type and class specified including any vertical extensions and adjusting to grade, restraints for fire hydrant/valve, including all materials, labor and all work complete and in place.

Item No. 44, Connect to Existing Water Line, when so called for in the proposal will be paid for at the unit price per each, as specified, including all materials, labor and all work complete and in place. Includes coordinating with Crystal Clear Special Utility District for making tie-ins and any water shut-off.

Item Nos. 45, 46, and 47, Water Services, when so called for in the proposal, will be paid for at the unit bid price, per each for the size, service, and size main specified, including all materials, labor and all work complete and in place, including service tubing of the size, type, and class specified. Also includes meter box.

Item No. 48, Cast Iron Fittings, when so called for in the proposal, will be paid for at the unit bid price, per lump sum, for the size, type and class specified, including plugs, bends, tees, crosses, reducers, glands, bolts, and gaskets, including all materials, labor and all work complete and in place.

Item Nos. 51, 52, and 53, Force Main, when so called for in the proposal, will be paid for at the unit bid price, per linear foot, for the size, class, depth, and type specified. Measurement shall be the horizontal distance along the centerline of the pipe. The bid price shall include excavation, pipe, bedding material, fittings, couplings, pipe coatings, backfilling, testing of force main, disposal of surplus materials, and cleanup.

Item Nos. 54, 55, and 56, Cleanout in Manhole, when so called for in the proposal, will be paid for at the unit bid price, per each, for the size and type specified, including all excavation, bedding material, piping, fittings, valves, couplings, plugs, enclosures, covers, backfilling, and final adjustments to grade (including castings to finished pavement).

Item No. 58, Single Service – Force Main, when so called for in the proposal, will be paid for at the unit bid price, per each, for the size service and size main specified, including but not limited to excavation, bedding material, manhole, service piping, fittings, couplings, cleanouts, plugs, backfilling, valves, and adjustment to grade.

Item No. 59, EOne Grinder Pump Station, when so called for in the proposal will be paid for at unit bid price, per each, which price shall be considered full compensation for completing all work; including all materials and labor, complete and in place.

Item No. 62, Revegetation (Hydromulch Seeding with Topsoil & Watering for Temporary and Permanent Revegetation), when so called for in the proposal, will be paid for at the unit contract price as specified in the proposal, which price shall be considered full compensation for furnishing and placing all materials and incidentals necessary to complete the work. Price to include sodding, watering, resodding, if necessary, and incidentals necessary to complete the work and meet the coverage and growth requirements identified in the construction plans. Revegetation limits shall extend 10 feet into the condo lots.

Measurement and Basis of Payment

Item No. 63, Stabilized Construction Entrance, when so called for in the proposal will be paid for at unit bid price, per each, which price shall be considered full compensation for completing all work; including all materials and labor, complete and in place.

Item No. 64, Silt fence, when so called for in the proposal will be paid for at the unit bid price, per linear foot, which price shall be considered full compensation for completing all work including revegetation, restoration and any excavation and/or fill associated with this work.

Item No. 65, Concrete Washout Area, when so called for in the proposal will be paid for at unit bid price, per each, which price shall be considered full compensation for completing all work; including all materials and labor, complete and in place.

Item No. 66, Inlet Protection, when so called for in the proposal, will be paid for at unit bid price, per each, which price shall be considered full compensation for furnishing and placing all materials and all incidentals necessary to complete the work. This item includes filter dikes or other City of Austin approved devices to be placed at curb inlets immediately after inlet installation to prevent sediment from entering storm sewer lines, as well as any adjustment and/or replacement, as required.

Item No. 67, Maintain Temporary Controls, when so called for in the proposal will be paid for at the unit bid price, per lump sum, which price shall be considered full compensation for completing all work including materials, installation, maintenance, and replacement of Inlet protection devices as specified in the construction drawings.

**VI. STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2026 by and between Lennar Homes of Texas Land and Construction, Ltd. (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

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

**GERONIMO HEIGHTS – PHASE 1
SITE DEVELOPMENT PLANS**

Article 2. ENGINEER

The Project has been designed by LJA Engineering, Inc., who is hereinafter called ENGINEER, and who is to act as OWNER's representative and assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1 The work will be substantially completed within 210 calendar days after the date the Contract Times commence. The Contract Times commence five calendar days after the Notice of Proceed, and the Work will be completed within 270 calendar days after the date when the Contract Times commence.

Article 4. CONTRACT PRICE.

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents per Section III (Bid Proposal) and Section IV (Measurement and Basis of Payment) an amount in current funds as follows: _____

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General and Supplementary Conditions.

- 5.1 **Progress Payments.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. The CONTRACTOR must submit his pay estimate as prescribed in the Supplementary Conditions of these Contract Documents. An amount not exceeding ten percent (10%) of the total of each progress payment shall be retained by OWNER until final payment. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.
- 5.2 **Final Payment.** Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including Addenda) and the other related data identified in the Bidding Documents including "technical data".
- 6.2 CONTRACTOR visited the site and became familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 6.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities). CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and

in accordance with the other terms and conditions of the Contract Documents.

- 6.5 CONTRACTOR is aware of the general nature of work performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. MISCELLANEOUS.

- 7.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, shall have the meanings indicated in the General Conditions.
- 7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 7.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 7.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Article 8. OTHER PROVISIONS.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed five (5) copies of this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 2026 (which is the effective date of the Agreement).

OWNER: Lennar Homes of Texas Land and Construction, Ltd. CONTRACTOR: _____

By: _____
Authorized Agent

By: _____
Authorized Agent

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

100 NE Loop 410, Ste. 1155 _____

San Antonio, Texas 78216 _____

License No. _____

Agent for services of
process: _____

If CONTRACTOR is a corporation, attach
Evidence of authority to sign.

VII. PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____, of the City of _____, County of _____, and State of Texas, as PRINCIPAL, and _____(Surety) authorized under the Laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the Lennar Homes of Texas Land and Construction, Ltd. (OWNER), in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said PRINCIPAL and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the OWNER, dated the ____ day of _____, 2026, to construct:

**GERONIMO HEIGHTS – PHASE 1
SITE DEVELOPMENT PLANS**

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

“PROVIDED, HOWEVER, That this bond is executed pursuant to the provisions of Chapter 2253* of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.”

*Not applicable for federal work. See “the Miller Act, “ 40 U.S.C. S270.

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 2026.

Principal Surety

By: _____ By: _____

Title: _____ Title: _____

Address: _____ Address: _____

State of Texas
County of _____

State of Texas
County of _____

This instrument was acknowledged before on this _____ day of _____, 2026 by _____, on behalf of said corporation/partnership.

This instrument was acknowledged before me on this _____ day of _____, 2026 by _____, on behalf of said corporation/partnership.

Notary Public in and for the State of Texas

Notary Public in and for the State of Texas

My Commission Expires _____

My Commission Expires _____

The name and address of the Resident Agent of Surety is:

NOTE: Date of Bond must be prior to date of Contract

VIII. PAYMENT BOND

STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____, of the City of _____, County of _____, and State of Texas, as PRINCIPAL, and _____ (Surety) authorized under the Laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the Lennar Homes of Texas Land and Construction, Ltd. (OWNER), in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said PRINCIPAL and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the OWNER, dated the ____ day of _____, 2026, to construct:

**GERONIMO HEIGHTS – PHASE 1
SITE DEVELOPMENT PLANS**

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF OBLIGATION IS SUCH, that if the said PRINCIPAL shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 2026.

Principal _____

Surety _____

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

State of Texas
County of _____

State of Texas
County of _____

This instrument was acknowledged before on this _____ day of _____, 2026 by _____, on behalf of said corporation/partnership.

This instrument was acknowledged before me on this _____ day of _____, 2026 by _____, on behalf of said corporation/partnership.

Notary Public in and for the State of Texas

Notary Public in and for the State of Texas

My Commission Expires _____

My Commission Expires _____

The name and address of the Resident Agent of Surety is:

NOTE: Date of Bond must be prior to date of Contract.

IX. GENERAL CONDITIONS OF THE AGREEMENT

The Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contracts Committee and issued and published jointly by the NSPE, ACEC, ASCE, and CSI (2002 Edition) are hereby incorporated by reference as the General Conditions of this contract. The CONTRACTOR shall be completely familiar with the Standard General Conditions and consider the cost to perform said Standard General Conditions in its bid. Significant modifications may have been made to the Standard General Conditions through the Supplementary Conditions or other portions of the Contract Documents. In the event of conflict between the Supplementary Conditions and the General Conditions, the Supplementary Conditions shall govern.

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

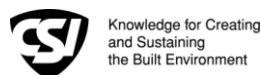
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The Associated General Contractors of America



Construction Specifications Institute

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**National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314**

**American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005**

**American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400**

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS	9
2.01 <i>Delivery of Bonds and Evidence of Insurance</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	9
2.07 <i>Initial Acceptance of Schedules</i>	9
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	10
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
3.06 <i>Electronic Data</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS	11
4.01 <i>Availability of Lands</i>	11
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	13
4.06 <i>Hazardous Environmental Condition at Site</i>	13
ARTICLE 5 - BONDS AND INSURANCE	14
5.01 <i>Performance, Payment, and Other Bonds</i>	14
5.02 <i>Licensed Sureties and Insurers</i>	15
5.03 <i>Certificates of Insurance</i>	15
5.04 <i>Contractor's Liability Insurance</i>	15
5.05 <i>Owner's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	17
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	18
6.01 <i>Supervision and Superintendence</i>	18
6.02 <i>Labor; Working Hours</i>	18
6.03 <i>Services, Materials, and Equipment</i>	18
6.04 <i>Progress Schedule</i>	18
6.05 <i>Substitutes and "Or-Equals"</i>	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	20
6.07 <i>Patent Fees and Royalties</i>	21
6.08 <i>Permits</i>	21
6.09 <i>Laws and Regulations</i>	21
6.10 <i>Taxes</i>	22
6.11 <i>Use of Site and Other Areas</i>	22
6.12 <i>Record Documents</i>	22
6.13 <i>Safety and Protection</i>	22
6.14 <i>Safety Representative</i>	23

6.15	<i>Hazard Communication Programs</i>	23
6.16	<i>Emergencies</i>	23
6.17	<i>Shop Drawings and Samples</i>	23
6.18	<i>Continuing the Work</i>	24
6.19	<i>Contractor's General Warranty and Guarantee</i>	24
6.20	<i>Indemnification</i>	24
6.21	<i>Delegation of Professional Design Services</i>	25
ARTICLE 7 - OTHER WORK AT THE SITE		25
7.01	<i>Related Work at Site</i>	25
7.02	<i>Coordination</i>	26
7.03	<i>Legal Relationships</i>	26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		26
8.01	<i>Communications to Contractor</i>	26
8.02	<i>Replacement of Engineer</i>	26
8.03	<i>Furnish Data</i>	26
8.04	<i>Pay When Due</i>	26
8.05	<i>Lands and Easements; Reports and Tests</i>	26
8.06	<i>Insurance</i>	26
8.07	<i>Change Orders</i>	26
8.08	<i>Inspections, Tests, and Approvals</i>	26
8.09	<i>Limitations on Owner's Responsibilities</i>	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	27
8.11	<i>Evidence of Financial Arrangements</i>	27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		27
9.01	<i>Owner's Representative</i>	27
9.02	<i>Visits to Site</i>	27
9.03	<i>Project Representative</i>	27
9.04	<i>Authorized Variations in Work</i>	27
9.05	<i>Rejecting Defective Work</i>	27
9.06	<i>Shop Drawings, Change Orders and Payments</i>	28
9.07	<i>Determinations for Unit Price Work</i>	28
9.08	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	28
9.09	<i>Limitations on Engineer's Authority and Responsibilities</i>	28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		28
10.01	<i>Authorized Changes in the Work</i>	28
10.02	<i>Unauthorized Changes in the Work</i>	29
10.03	<i>Execution of Change Orders</i>	29
10.04	<i>Notification to Surety</i>	29
10.05	<i>Claims</i>	29
ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK		30
11.01	<i>Cost of the Work</i>	30
11.02	<i>Allowances</i>	31
11.03	<i>Unit Price Work</i>	31
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		32
12.01	<i>Change of Contract Price</i>	32
12.02	<i>Change of Contract Times</i>	33
12.03	<i>Delays</i>	33
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		33
13.01	<i>Notice of Defects</i>	33
13.02	<i>Access to Work</i>	33
13.03	<i>Tests and Inspections</i>	33
13.04	<i>Uncovering Work</i>	34
13.05	<i>Owner May Stop the Work</i>	34
13.06	<i>Correction or Removal of Defective Work</i>	34
13.07	<i>Correction Period</i>	34
13.08	<i>Acceptance of Defective Work</i>	35
13.09	<i>Owner May Correct Defective Work</i>	35
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		36
14.01	<i>Schedule of Values</i>	36
14.02	<i>Progress Payments</i>	36

14.03	<i>Contractor's Warranty of Title</i>	37
14.04	<i>Substantial Completion</i>	37
14.05	<i>Partial Utilization</i>	38
14.06	<i>Final Inspection</i>	38
14.07	<i>Final Payment</i>	38
14.08	<i>Final Completion Delayed</i>	39
14.09	<i>Waiver of Claims</i>	39
ARTICLE 15	SUSPENSION OF WORK AND TERMINATION	39
15.01	<i>Owner May Suspend Work</i>	39
15.02	<i>Owner May Terminate for Cause</i>	39
15.03	<i>Owner May Terminate For Convenience</i>	40
15.04	<i>Contractor May Stop Work or Terminate</i>	40
ARTICLE 16	DISPUTE RESOLUTION	41
16.01	<i>Methods and Procedures</i>	41
ARTICLE 17	MISCELLANEOUS	41
17.01	<i>Giving Notice</i>	41
17.02	<i>Computation of Times</i>	41
17.03	<i>Cumulative Remedies</i>	41
17.04	<i>Survival of Obligations</i>	41
17.05	<i>Controlling Law</i>	41
17.06	<i>Headings</i>	41

GENERAL CONDITIONS

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's 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.A 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. The General Requirements pertain to all sections 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 in connection with the Work.

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. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

38. *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.

39. *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.

40. *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.

41. *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.

42. *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.

43. *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.

44. *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.

45. *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.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

48. *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 any Subcontractor.

49. *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.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *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.

52. *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 following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following 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 requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 which 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*

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.

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 may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended 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, or Engineer, or any of, their Related Entities, 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 may discover 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 any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, 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 knew or reasonably should have known 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, code, or instruction (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 or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, 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 Engineer's consultants, including electronic media editions; or

2. reuse any of 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 adaption by Engineer.

B. The prohibition 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. Copies of data furnished by Owner or Engineer to Contractor or 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 of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general 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 Related Entities 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 at or contiguous to the Site 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, Owner and Engineer, and any of their Related Entities 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.

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; 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:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general 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 Related Entities 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.

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 to Contractor written notice: (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, 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, 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 current 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 must be accompanied by a certified copy of the agent's authority to act.

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 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 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.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (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, 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 completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. 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);

6. 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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. 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, 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 an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, 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 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 additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery 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, 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 an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with 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 additional insured 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 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 to be listed as insureds or additional insureds (and the officers, directors, 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 additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, 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 to be listed as insured or additional insured (and the officers, directors, 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, 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, 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 insureds, 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. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

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,

3) it has a proven record of performance and availability of responsive service; and

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 that 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 in 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 or not 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 or not 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;

4) and 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 either a Change Order for a substitute or 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 item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the 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 anything in the Contract Documents 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 an additional insured 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, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, 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, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 primary 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, 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. 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. 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 , 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).

D. 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 acceptable 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*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

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 determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria,

installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have 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.

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 Drawing's 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 Related Entities 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, 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 respective consultants, agents, officers, directors, partners, or employees 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, 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 via 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, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall 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 their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *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 actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's 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 in respect of 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 in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in 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 in 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. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

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 and will not be changed without written consent of Owner and Engineer.

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 believe 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 respon-

sible 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.

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.B.

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 notice 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) is required by the provisions of any bond to be given to a surety, 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 Time 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 include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

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 at the Site. 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, 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, expresses, 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 and 11.01.B.

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 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 Paragraph 12.01.C.2.a 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 the Related Entities of each of them 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. All 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, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site 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 said 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, it must, if requested by Engineer, be uncovered 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 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 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 on the Site 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, to the

results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to 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. that 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 corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined 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.

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 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 will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion 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.7;
- 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 or Owner's property might in any way be responsible 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 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 their 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.

X. SUPPLEMENTARY CONDITIONS

1. PRIORITY OF INTERPRETATION

In case of conflict between any of the contract documents, priority of interpretation shall be in the following order: (1) Agreement, (2) Supplementary Conditions of Agreement, (3) General Conditions of Agreement, (4) Proposal, (5) Supplemental Technical Specifications, (6) Referenced Specifications, (8) Plans, and (9) Standard Details.

The CONTRACTOR shall check and verify all dimensions and conditions at the job site and be responsible for same.

2. TIME OF COMPLETION

The contract time for substantial completion is 210 calendar days. Substantial completion is defined as the completion of all work in the Contract, including change orders, and the project punch list by the Owner's Engineer has been completed. Substantial completion does not include grass growth/revegetation. Before a project can be deemed Substantial Completion in addition to the Engineer's punch list being completed, record drawings, final cost and quantities, and the maintenance bond must also be submitted to the Owner's Engineer. The final completion for all the work in this contract including dry utilities is 270 calendar days. The contract time will start five days after the Notice to Proceed.

Liquidated damages of \$1,500.00/day will be assessed if the substantial completion exceeds 210 calendar days. The liquidated damages will be waived if final completion is received by the City on or before the 270 calendar days.

To keep track of rain days the contractor shall submit with each pay request the number of rain days he is requesting. The number of approved rain days will be added to the contract time.

3. CALENDAR DAY

If the CONTRACTOR works on the site until Noon, or in the judgment of the ENGINEER, could have worked until Noon, the day in question shall be considered as a Calendar Day in computing Contract Time. Calendar days shall be considered as Monday through Sunday excluding legal holidays. The CONTRACTOR may work on Saturday.

Legal holidays are New Year's Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving, the day after Thanksgiving, the day before Christmas, and Christmas.

4. GUARANTEE

The CONTRACTOR shall guarantee the work against failure or malfunction due to defective materials or workmanship for a period of one year from the date final payment becomes due. Where the CONTRACTOR is required to procure and furnish articles manufactured by others, the standard warranty, if any, of the manufacturer thereof shall be delivered to the OWNER by the CONTRACTOR in proper form in order to insure OWNER's benefit.

The CONTRACTOR shall warrant that all equipment furnished by him hereunder complies in all

respects with the design and Specifications of this Contract and contains no defect in material or workmanship. When defective material and/or workmanship are discovered, all required repairs shall be made by the CONTRACTOR at his own expense. Such repairs shall be initiated within five (5) days after written notice of such defects has been given by the OWNER or his designated representative, and the work of the repairs shall proceed with dispatch so that the repairs will be completed within a reasonable length of time. Should the CONTRACTOR fail to initiate the repairs within five (5) days after written notice or should he fail to complete the repairs within a reasonable time, the OWNER may make the necessary repairs and charge the CONTRACTOR with all costs incurred therefore.

The first year of service shall be interpreted as the twelve month period following the start of actual operating use of the equipment and shall be exclusive of the time of use of the equipment in installation, testing, adjusting, etc., during the construction period and prior to final acceptance of the facilities from the CONTRACTOR.

Prior to the expiration of the one-year guarantee period, the OWNER reserves the right to require a re-inspection of the work covered by this project. Such inspection shall be made by duly authorized representatives of the OWNER, ENGINEER, and CONTRACTOR, in order to determine if any defects or deficiencies exist which are due to be corrected by the CONTRACTOR.

5. PAYMENT

Payment is by unit price or lump sum only. Unit prices will be paid by actual amounts, not by the estimated quantity of the proposal. The estimated quantity units of the PROPOSAL are for estimation purposes only.

All work and material in the Contract are to be paid for through estimates prepared by the CONTRACTOR and subject to approval of the OWNER and ENGINEER. The CONTRACTOR shall submit estimates monthly. CONTRACTOR's estimate shall be submitted to the ENGINEER by the fifth day of the following month. Only one estimate may be submitted in any month. The pay estimates shall be based on the Unit Prices and Lump Sum Bid Items as listed in the Proposal. Errors in pay estimates prepared by the CONTRACTOR may result in payment delays at no expense to the OWNER or ENGINEER.

Estimates for work completed will be submitted to the OWNER using standard forms supplied by the CONTRACTOR and approved by the OWNER. In addition, the following forms may be requested by the OWNER:

- A. Affidavit of Account: Information pertaining to accounts due shall include all accounts relating to the Project, both current and past due.
- B. Waiver of Lien, Material or Labor.
- C. Waiver and Release of Mechanics Lien for final payment.

6. RETAINAGE

The amount of retainage for this project shall not exceed 10% (ten percent) of the total construction cost. The retainage shall be released for payment upon acceptance of the Project by the ENGINEER and OWNER.

7. PAYMENT WITHHELD

In addition to the reasons for withholding payment as provided in the General Conditions, monthly and final payments may be withheld for failure of the CONTRACTOR to remove condemned work or materials from the project or make satisfactory corrections after having received written notice to do so from the ENGINEERS.

8. PROTECTION OF PROPERTY AND EXISTING UTILITIES

All private property along and adjacent to the CONTRACTOR's operation, including lawns, yards, shrubs, trees, structures, trails, paths, livestock, and fences, shall be adequately protected, and when damaged or removed, shall be repaired, replaced, renewed or otherwise put in a condition equal to or better than that which existed before the CONTRACTOR caused the damage or removal, at the CONTRACTOR's expense. Where livestock are present, CONTRACTOR shall take all necessary precautions to assure that no construction or construction related activity will allow livestock to leave their confine. Where existing fences are being crossed, CONTRACTOR shall maintain the integrity of the fence during construction through placement of guards, temporary fences, or other adequate measures as approved by the ENGINEER. All construction activities, including ingress and egress, shall occur within the boundaries and contract constraints of the temporary and permanent construction limits. Additionally, no staging, parking, loading and/or unloading shall occur outside of the designated construction limits.

The CONTRACTOR shall be responsible for the protection of all existing utilities or improvements crossed by or adjacent to his construction operations. An attempt has been made to show existing utilities on the plans, but the possibility remains that some utilities may exist that have not been shown. The CONTRACTOR, through contact and cooperation with local utility owners, shall verify the location of all utilities involved in the field prior to construction and take such precautions as necessary to avoid damage. Where existing utilities or service lines are cut, broken or damaged, the CONTRACTOR shall replace or repair immediately the utilities or service lines with the same type of original material and construction, or better, at his own cost and expense.

If an existing utility is in conflict with portions of the proposed improvements which must be installed at established lines and grades, the OWNER will either modify the design of the improvements or have the utility moved at the OWNER's expense. Where the CONTRACTOR desires to have an existing utility moved that does not actually conflict, but is adjacent to the CONTRACTOR's work, then in such case the CONTRACTOR shall pay for adjustment of the existing utility.

9. MATERIALS FURNISHED BY OWNER

The OWNER will not furnish any materials. Water, power, and telephone used for any purpose incidental to this project shall be purchased by the CONTRACTOR. The CONTRACTOR shall make the necessary arrangements to pay for such water, power, and telephone prior to final acceptance of the project.

10. PHYSICAL CONDITIONS

All CONTRACTORS submitting proposals for this work shall examine the site to determine and evaluate site conditions. All proposals shall take into consideration such conditions as may affect the work under this contract.

11. PROTECTION OF PROPERTY PINS

The CONTRACTOR shall take every reasonable precaution to preserve the layout from which construction is to be or has been performed. The CONTRACTOR shall not disturb any survey control point mark until the survey control point has been referenced by the Surveyor. In the event that the CONTRACTOR disturbs any survey control point or reference mark during construction operations or if stakes are lost or disturbed for any reason, the Surveyor will reset such control point or reference mark or stakes at the expense of the CONTRACTOR. The CONTRACTOR will be responsible for payment to the OWNER for all re-staking and additional staking requested in writing to the Surveyor by the CONTRACTOR. The OWNER, at his discretion, may withhold portions of the CONTRACTOR's pay estimate for amounts owed to OWNER by CONTRACTOR for re-staking and additional staking. It will be the responsibility of the CONTRACTOR to inform his employees and his subcontractors of the importance of the survey stakes and the necessity for their preservation.

12. INSPECTION

The word "Inspection", or other forms of the word, as used in the Contract Documents for this project, shall be understood as meaning the ENGINEER or his representative will observe the construction on behalf of the OWNER. The ENGINEER or his representative will observe and check the construction in sufficient detail to satisfy himself that the work is proceeding in general accordance with the Contract Documents, but he will not be a guarantor of the CONTRACTOR's performance.

13. REMOVAL OF CONDEMNED MATERIALS AND STRUCTURES

The CONTRACTOR shall remove from the site of work, including the staging and access areas, all rejected and condemned materials or work of any kind brought to or incorporated in the project. Should the CONTRACTOR fail to do so, or to make satisfactory progress in so doing, within forty-eight (48) hours after the service of a written notice from the ENGINEER ordering such removal, the condemned material or work may be removed from the project by the OWNER and the cost of such removal be taken out of the money that may be due or may become due to the CONTRACTOR on account of virtue of the Contract. No such rejected or condemned material shall again be offered for use by the CONTRACTOR under this project.

14. PROTECTION OF CONTRACT WORK

The CONTRACTOR will be responsible for the care of all work, including materials, until final completion and acceptance, and he will be required to make good at his own expense any damages or injury it may sustain from any cause.

15. CONTRACTOR'S RESPONSIBILITY FOR MATERIAL

In addition to the CONTRACTOR's responsibilities as per the General Conditions, the CONTRACTOR shall be responsible for the safe storage of materials furnished by him or accepted by him and intended for the work.

The CONTRACTOR shall examine all materials furnished at the time and place of delivery and shall reject all defective or damaged material. Any defective material not rejected by the CONTRACTOR and discovered prior to final acceptance of the work shall be replaced with sound material by the CONTRACTOR, and the CONTRACTOR shall furnish such additional material and supplies as may be necessary to install such replaced material. The CONTRACTOR shall remove defective materials and install the replaced material at his own expense, furnishing all labor and facilities necessary to meet requirements of the Drawing, Specifications and/or approved Shop Drawings or modifications made during construction. Inspection before installation shall not relieve the CONTRACTOR from the responsibility to furnish good quality materials in place. The OWNER will not accept delivery of materials for the CONTRACTOR; therefore, the CONTRACTOR shall be fully responsible for making his own arrangements with suppliers and shipping agencies for delivery to the proper locations. In addition, the CONTRACTOR shall be responsible for acceptance of delivery of materials and supplies by his own personnel.

16. ADDITIONAL REGULATIONS AND SPECIFICATIONS

All construction by the CONTRACTOR, or his sub-contractors, shall be in accordance with all applicable Crystal Clear Special Utility District, Guadalupe County, State of Texas, and other Governmental ordinances, rules, and regulations. Guadalupe County Regulations, latest edition, shall apply to this project, and are included herein by reference. Copies of these specifications are available for inspection at the Office of the ENGINEER.

17. REFERENCE STANDARDS

Reference to the standards of any technical society, organization, or association, or to codes of local and state authorities, shall mean the latest standard, code, specification, or tentative specification adopted and published at the date of taking bids, unless specifically stated otherwise.

18. PERMITS AND RIGHTS-OF-WAY

The CONTRACTOR will be responsible for obtaining street cut permits, off-side disposal permits, and any other permit required as part of the construction activities which are not otherwise paid for by the OWNER under the terms of this Agreement. Unless the OWNER provides the permit(s) to the CONTRACTOR, it is the CONTRACTOR's responsibility to obtain the necessary permits to construct this project.

The OWNER will provide rights-of-way for the purpose of construction without cost to the CONTRACTOR. It shall be the responsibility of the CONTRACTOR, prior to the initiation of construction on easements through private property, to inform the property owner of his intent to begin construction. Before beginning construction in areas of public dedication, the CONTRACTOR shall inform the agency having jurisdiction in the area forty-eight (48) hours prior to initiation of the work.

The CONTRACTOR's attention is directed to the limits of construction as shown on the plans. The CONTRACTOR shall restrict his operations within the limits of construction. He shall be responsible for all damages to pavement, structures, fences, trees, crops, grasses, etc. as a result of any operations that occur outside such limits.

19. USE OF EXPLOSIVES

Blasting will not be allowed as part of the required excavation process.

20. ACCESS AND HAUL ROUTES

The CONTRACTOR shall utilize access and haul routes along public streets in accordance with permit limitations imposed upon him by city, state, or municipal road or highway departments. These access routes shall be subject to change by the ENGINEER, occasioned by the progress of the work or unforeseen conditions. Changes required in haul routes shall not be the basis for extra payment.

21. BURNING

No burning of trash, organic material, or construction-related material shall be allowed as part of this project.

22. DEWATERING

Dewatering, if necessary, will be considered incidental to the Work and will not constitute a basis for additional payment.

23. GEOTECHNICAL STUDY

Site preparation, pavement and base thickness, earthwork, and construction methods shall be in conformance with the recommendations and specifications contained within the Professional Service Industries, Inc. report entitled "Geotechnical Engineering Report; Geronimo Heights – Streets FM 2623", dated January 29, 2025 unless otherwise shown in plans or unless in conflict with Guadalupe County Standard Specifications, in which case the more restrictive requirement applies. A copy of the geotechnical report is provided under a separate cover and is a part of the Contract Documents. Additional copies may be obtained from the office of the ENGINEER upon request.

24. CORPORATE AUTHORIZATION

The CONTRACTOR shall provide a corporate authorization resolution certifying the authorized agent of the corporation to sign all documents for this project.

25. BARRICADES, LIGHTS, AND WATCHMEN

Where the work is carried on in or adjacent to any street, alley, or public place, the CONTRACTOR shall furnish and erect such barricades, fences, lights, and danger signals, shall provide such watchmen, and shall provide such other precautionary measures for the protection of persons or property and of the work as are necessary, all in accordance with the Contract Documents and the latest edition of the Texas Manual on Uniform Traffic Control Devices.

Barricades shall be painted in a color that will be visible at night. From sunset to sunrise, the CONTRACTOR shall furnish and maintain at least one light at each barricade and sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The CONTRACTOR shall furnish watchmen in sufficient numbers to protect the work.

The CONTRACTOR will be held responsible for all damage to the work due to failure of barricades, signs, lights, and watchmen to protect it, and whenever evidence is found of such damage, the ENGINEER may order the damaged portion immediately removed and replaced by the CONTRACTOR at his cost and expense. The CONTRACTOR's responsibility for the maintenance of barricades, signs, and lights, and for providing watchmen shall not cease until the project shall have accepted by the OWNER.

26. TESTING

The Owner will provide testing except the test identified to be the responsibility of the Contractor. Contractor shall be responsible for the cost of any retest due to failure.

27. CLEANUP

- (1) During Construction - The CONTRACTOR shall, at all times, keep the job site as free from all materials, debris, and rubbish as is practicable and shall remove same from any portion of the job site, when it becomes objectionable or interferes with the progress of the project in the opinion of the ENGINEER or OWNER.
- (2) Final Cleanup – Upon completion and before making application for acceptance of the work, the CONTRACTOR shall clean all streets and all ground occupied by him in connection with the work of all rubbish, excess materials, excess excavated materials, temporary structures, and equipment. All parts of the work shall be left in a neat and presentable condition satisfactory to the OWNER and Governmental bodies having jurisdiction prior to submittal of the final pay estimate. Payment for final cleanup is considered incidental to the unit prices bid for the work, and will not constitute a basis for additional payment. All disturbed areas shall be re-vegetated in accordance with the permanent re-vegetation specifications

28. COPIES OF PLANS AND SPECIFICATIONS FURNISHED

Three (3) sets of plans and specifications shall be furnished to the CONTRACTOR, at no charge, for construction purposes. Additional copies of the documents may be purchased by the CONTRACTOR from the ENGINEER at cost plus 15% handling charges.

29. TEMPORARY WATER, POWER AND TELEPHONE

It shall be the responsibility of the CONTRACTOR, and at his sole expense, to obtain and utilize temporary electric power, telephone, and water service. This includes all water required for testing the facilities that are being constructed and for irrigation of vegetation for site restoration. Additionally, the CONTRACTOR will need to coordinate with Crystal Clear Special Utility District for use of water for construction and irrigation purposes.

30. 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 in the area of 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 or OWNER 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 the "Engineer's Limitations," stated below, 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.

31. OFFICE/TRAILERS AND STAGING AREA

All office/trailers and staging areas shall be strictly confined within the limits of the Temporary Spoils Disposal/Construction Staging Area indicated on the plans, unless otherwise specifically authorized by Owner.

32. ENGINEER'S LIMITATIONS

ENGINEER, whether acting as ENGINEER or OWNER's representative, 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 safety 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.

33. INDEMNITY, INSURANCE, AND BONDS

1. Section 6.20 of the General Conditions is deleted and the following provision is inserted in its place:

TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL DEFEND (AT CONTRACTOR'S EXPENSE AND WITH COUNSEL ACCEPTABLE TO OWNER, WHOSE APPROVAL SHALL NOT BE UNREASONABLY WITHHELD), INDEMNIFY, AND HOLD HARMLESS OWNER, AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION AND ARBITRATION, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE

RESOLUTION COSTS AND ATTORNEY'S FEES, ARISING ON ACCOUNT OF OR IN CONNECTION WITH INJURIES TO OR THE DEATH OF ANY PERSON WHOMSOEVER OR ANY AND ALL DAMAGES TO PROPERTY (INCLUDING THE LOSS OF USE THEREOF), REGARDLESS OF POSSESSION OR OWNERSHIP, WHICH INJURIES, DEATH OR DAMAGES ARISE FROM OR ARE IN ANY MANNER CONNECTED WITH THE WORK PERFORMED BY OR FOR THE CONTRACTOR UNDER THIS CONTRACT OR ARE CAUSED IN WHOLE OR PART BY REASON OF THE ACTS OR OMISSIONS OR PRESENCE OF THE PERSON OR PROPERTY OF CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, OR SUPPLIERS, **INCLUDING WITHOUT LIMITATIONS INJURIES, DEATH, OR DAMAGES WHICH ARISE FROM OR IN CONNECTION WITH, ANY ACT, ERROR, OMISSION, OR NEGLIGENCE OF CONTRACTOR, AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, COMPANIES, OR SUPPLIERS; BUT EXCLUDING INJURIES, DEATH OR DAMAGES TO THE EXTENT CAUSED BY THE NEGLIGENCE (COMPARATIVE NEGLIGENCE PRINCIPLES WILL BE APPLIED) OR WANTON AND WILLFUL MISCONDUCT OF OWNER.** THE INDEMNIFICATION OBLIGATIONS UNDER THIS CONTRACT 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 UNDER WORKER'S OR WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS, AND SHALL EXTEND TO AND INCLUDE ANY ACTIONS BROUGHT BY OR IN THE NAME OF ANY EMPLOYEE OF CONTRACTOR OR OF ANY THIRD PARTY TO WHOM CONTRACTOR MAY SUBLET A PART OF THE WORK

INDEMNITY

CONTRACTOR AGREES TO DEFEND, HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY BUILDER, ITS AGENTS AND EMPLOYEES, AGAINST AND FOR ALL LIABILITY, COSTS, EXPENSES (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, LOSSES, CLAIMS AND DAMAGES (INCLUDING LOSS OF USE) THAT BUILDER MAY AT ANY TIME SUFFER OR SUSTAIN OR BECOME LIABLE FOR BY REASON OF ANY ACCIDENTS, DAMAGES OR INJURIES TO BUILDER, CONTRACTOR, CONTRACTOR'S PROPERTY, AGENTS, EMPLOYEES AND/OR SUBCONTRACTORS, AND/OR ANY OTHER PARTIES, IN ANY MANNER, ARISING FROM THE WORK PERFORMED HEREUNDER, INCLUDING BUT NOT LIMITED TO:

- A. CONTRACTOR'S OR BUILDER'S NEGLIGENCE (INCLUDING BUT NOT LIMITED TO NEGLIGENT HIRING);
- B. CONTRACTOR'S OR BUILDER'S GROSS NEGLIGENCE;
- C. STRICT LIABILITY;
- D. FAILURE OF CONTRACTOR, ITS AGENTS OR EMPLOYEES TO COMPLY WITH ANY OSHA, FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS RELATING TO HEALTH AND SAFETY; OR
- E. BREACH OF EXPRESS OR IMPLIED WARRANTY BY BUILDER OR CONTRACTOR, THEIR AGENTS OR EMPLOYEES.

CONTRACTOR'S INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREUNDER SHALL EXTEND TO CLAIMS OCCURRING AFTER THIS AGREEMENT IS TERMINATED

AS WELL AS WHILE IT IS IN FORCE AND SHALL CONTINUE UNTIL IT IS FINALLY ADJUDICATED THAT ANY AND ALL ACTIONS AGAINST BUILDER AND ALL OTHER INDEMNIFIED PARTIES ARE FULLY AND FINALLY BARRED BY APPLICABLE LAW. CONTRACTOR ACKNOWLEDGES THAT IT IS INDEMNIFYING BUILDER FOR ITS OWN SOLE AND PARTIAL NEGLIGENCE.

INSURANCE

- A. The CONTRACTOR shall not commence any work until he has obtained all insurance required under these insurance provisions and until such insurance has been approved by OWNER or ENGINEER, nor shall the CONTRACTOR allow any subcontractor to commence any work on this subcontract until similar insurance required as that for the CONTRACTOR has been so obtained by the subcontractor and approved by OWNER or ENGINEER.
- B. All insurance shall be with insurance companies admitted to do business in the state where work is performed and have a Best's Insurance rating of not less than "A".
- C. All of the insurance obtained in connection with all work performed hereunder shall be maintained continuously to cover any losses, claims or other causes of action arising directly or indirectly out of the work performed hereunder. Such insurance shall include, but not be limited to coverage for claims occurring during the term of this agreement, but not reported until a later date. Each policy and certificate of insurance shall provide that such insurance shall not be decreased or terminated without at least thirty (30) days prior written notice to OWNER or ENGINEER. Each policy and certificate of insurance shall include the OWNER and ENGINEER as additional insureds, and shall be filed with OWNER or ENGINEER prior to the commencement of work.
- D. At all times, CONTRACTOR shall provide or cause to be provided the following types of insurance:
- i. Workers Compensation:
Such insurance which will protect the CONTRACTOR from claims under statutory workmen's compensation laws, disability laws or such employee benefit laws shall be in full compliance with the law in the state where the work is to take place and shall contain a waiver of subrogation as to the OWNER and ENGINEER and their consultants, agents and employees.
 - ii. Employer's Liability:
Such insurance shall have a limit of liability of not less than \$500,000 per accident and shall be endorsed to provide a waiver of subrogation as to the OWNER and ENGINEER and their consultants, agents and employees.
 - iii. Comprehensive General Liability:

Commercial General Liability insurance shall be written on ISO form CG 00 01 12/04 or equivalent. The limits of liability shall apply per project and not be less than the following: (a) limits for each occurrence of \$1,000,000; (b) \$1,000,000 general aggregate; (c) \$2,000,000 products/completed operations aggregate, and (d) \$1,000,000 personal and advertising injury limit coverage which shall include premises/operations liability, independent contractors liability, and contractual liability specifically in support of, but not limited to, the indemnity provisions set forth in this Agreement to the fullest extent allowed by law. This policy shall include a waiver of subrogation in favor of OWNER and its agents and employees, and will be endorsed to include OWNER and its agents and employees as Additional Insured using endorsement CG 2010 11/85, or a combination of ISO forms CG 2010 7/04 and CG 2037 7/04 (or substitute forms providing equivalent coverage) to the fullest extent allowed by law; and will contain cross-liability and severability of interest coverage: shall state that such insurance is primary to and non-contributory with any other insurance carried by Contractor and include a per project aggregate endorsement. Contractor shall maintain CGL coverage for itself and all additional insureds for itself and each additional insured for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least three (3) years after completion of the Work. Contractor must give OWNER at least thirty (30) days' prior written notice before any subcontractor's policy may be cancelled (and the subcontractor's policy must be endorsed to so reflect the required notice).

iv. Automobile Liability:

Such insurance shall have a combined single limit of not less than \$1,000,000 per occurrence and cover all owned, non-owned and hire vehicles.

v. Excess Liability:

Such insurance shall have a limit of liability of not less than \$5,000,000 and shall be following form to those insurances required in 35.D.ii, 35.D.iii, and 35.D.iv.

vi. Machinery and Equipment:

CONTRACTOR's machinery and equipment shall be adequately insured.

vii. Property Insurance

a. Paragraph 5.04 of the Standard General Conditions is hereby modified by adding paragraphs 5.04.B.8 and 5.04.B.9, to read, as follows:

5.04.B.8. be issued by an "A" rated insurance company or companies;

5.04.B.9. with respect to insurance required by paragraphs 5.04.A.1 and 5.04.A.2, 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 any additional insureds thereunder.

- b. CONTRACTOR shall be liable for any damage to the Project that occurs prior to final payment pursuant to paragraph 14.07 and CONTRACTOR, at its sole cost and expense, shall purchase and maintain the property insurance required in paragraph 5.06 of the Standard General Conditions.
- c. Paragraph 5.06.C. of the Standard General Conditions is hereby modified to read, as follows:
 - 5.06.C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR or OWNER in accordance with paragraphs 5.06.A and 5.06.B will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07 (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide).
- d. With regard to the waivers set forth in the paragraph 5.07.A, such waivers shall be applicable only to the extent of any insurance proceeds paid with respect to the losses or damages for which the waiver is being enforced.
- e. Paragraph 5.07.B.2. of the Standard General Conditions is hereby modified to read, as follows:
 - 5.07.B.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER after final payment pursuant to paragraph 14.07.
- f. Paragraph 5.08.B of the Standard General Conditions is hereby modified to read, as follows:
 - 5.08.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 fifteen days after the occurrence of loss to OWNER'S exercise of this power. If such objection be made, OWNER as fiduciary shall use reasonable efforts to 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 obtain a bond, at the cost of the party requiring such bond, for the proper performance of such duties.

- vii. No insurance other than as specified herein is required to be provided by the CONTRACTOR unless requested by OWNER or ENGINEER. If the CONTRACTOR does not then carry such additionally requested insurance, the costs of acquiring and maintaining such additionally requested coverage can be charged to OWNER.

34. LAWS AND ORDINANCES

The CONTRACTOR shall at all times observe and comply with all Federal, State, and Local laws, ordinances, codes and regulations which in any manner affect the Contract or the work. CONTRACTOR is solely responsible for compliance with said laws, etc., and further represents that he is familiar with such. Neither ENGINEER nor OWNER has any responsibility to monitor or inspect the compliance with said laws, etc. If the CONTRACTOR observes that the project is at variance therewith, he shall promptly notify the ENGINEER in writing and any necessary changes shall be prepared as provided in the Contract for changes in the work. If the CONTRACTOR performs any work that is contrary to such laws, ordinances, rules and regulations and without such notice to the ENGINEER, he shall bear all costs arising therefrom whether incurred by CONTRACTOR, OWNER, or ENGINEER. The ordinances and regulations of Guadalupe County shall be controlling and shall be considered as part of this Contract to the same effect as though embodied herein.

Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. The CONTRACTOR shall plan and execute his operations in compliance with applicable Federal, State, and Local laws and regulations concerning the control and abatement of water pollution and the prevention and control of air pollution.

The CONTRACTOR shall exercise care to preserve the natural landscape within the project site and shall conduct his construction operations so as to prevent any unnecessary destruction, scarification, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent construction, trees and vegetation shall be preserved and protected from damages that may be caused by equipment and construction operations. Where unnecessary destruction or damage to trees occurs as a result of the CONTRACTOR's operations, replacement or correction shall be made at the CONTRACTOR's expense as directed by the ENGINEER. Prevention of noise pollution shall be a responsibility of the CONTRACTOR. Garbage, trash, and material debris shall be picked up daily and deposited in a suitable receptacle provided and maintained by the CONTRACTOR. Measures shall also be implemented to prevent the escape of sediment, mud and dust from the designated limits of construction. The CONTRACTOR shall maintain adjacent public and/or private streets clean and free of sediment and debris which might be generated by site construction, including sweeping streets as necessary.

35. ENGINEER'S PROFESSIONAL SERVICES

"Professional Services" provided by the ENGINEER are defined as the drawing and approving of designs, Plans or Specifications.

"Professional Services" do not include:

1. Training of CONTRACTOR or Subcontractors or their agents, employees or representatives;
2. Supervision of CONTRACTOR or Subcontractors or their agents, employees or representatives;
3. Implementation, enforcement or approval of safety programs or procedures on the job site;
4. Instructing or directing CONTRACTOR or Subcontractors or their agents, employees or representatives to use or not use safety equipment or to follow or disregard safety procedures;
5. Constant physical presence on the job site;
6. Constant inspection of soil conditions during trenching operations or any excavations;
7. Inspection of trenching or excavation operations or any other part of the work for the purpose of determining compliance with OSHA or other regulations, statutes, ordinances, or laws;
8. Ensuring safety on the job site including, but not limited to compelling the CONTRACTOR, Subcontractors, their agents, employees or representatives to comply with applicable laws, ordinances, statutes or regulations; or
9. Giving directions or instructions to CONTRACTOR or Subcontractors or their agents, employees or representatives regarding the methods or manner of their work.

36. EXAMINATION OF THE PROJECT SITE

Prospective bidders shall make a careful examination of the project site, soil and water conditions to be encountered, improvements to be protected, disposal sites for surplus materials not designated to be salvaged materials, and as to method of providing ingress and egress to private properties, and methods of handling traffic during construction of the entire project.

37. TREES AND VEGETATION

The CONTRACTOR shall protect all trees and natural vegetation specifically identified on the plans. The CONTRACTOR shall also protect all other natural vegetation to the extent feasible during construction.

38. WORKING HOURS

The CONTRACTOR shall limit his work to the following hours, unless otherwise approved in writing by the OWNER:

Monday – Friday:	Dawn to Dusk
Saturday:	8:00 AM to 7:00 PM
Sunday:	No work allowed
Legal Holidays:	No work allowed

39. MAINTENANCE BOND

The CONTRACTOR will be required to furnish a two-year maintenance bond in an amount at least equal to 20% of the final water improvements Contract Price to Crystal Clear Special Utility District. The CONTRACTOR will be required to furnish a two-year maintenance bond in an amount at least equal to 100% of the final contract price of all other improvements before final retainage will be released. The bonds shall be in effect for two year after the date final payment becomes due.

40. RECORD DRAWINGS

The information furnished by the CONTRACTOR will be used by the ENGINEER to prepare a set of reproducible “record drawings” which will be signed by the CONTRACTOR prior to final acceptance and final payment.

41. PROCEDURES THAT MUST BE FOLLOWED FOR FUNDING OF PAY REQUESTS

1. First Draw and all other draws except for Final Draw:

CONTRACTOR submits to ENGINEER three (3) original executed draw requests (which amount shall exclude statutory and contractual retainage).

2. Final Draw:

CONTRACTOR submits to ENGINEER:

- (i) three (3) original executed final draw requests (which amount shall include statutory and contractual retainage);
- (ii) all bonds, manuals, and warranties (accompanied with a written assignment of CONTRACTOR's rights thereunder, if requested by Owner) for any materials or equipment installed or furnished;
- (iii) one (1) original and three (3) copies of Contractor's Affidavit and Lien Waiver (using the forms contained within this Contract) **effective through the completion date**, appropriately completed, fully executed by and properly acknowledged for CONTRACTOR, and
- (iv) one (1) original and three (3) copies each of Subcontractor's Lien Waivers (using the forms contained within this Contract) **effective through the completion date**, appropriately completed, fully executed by and properly

acknowledged for each person and entity listed on Exhibit "A" attached to the Contractor's Affidavit and Lien Waiver.

3. Retainage will be released in accordance with Chapter 53 of the Texas Property Code and per the terms of the contract. Completion of "punch-list" items is required along with the issuance of appropriate "completion" and "acceptance" letters and certificates, and the execution and delivery to Owner of such other affidavits and lien waivers as may be deemed appropriate considering individual circumstances.

CONTRACTOR'S AFFIDAVIT AND LIEN WAIVER

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, personally appeared _____,
who, being by me duly sworn, states as follows:

I.

My name is _____. I am _____ of
_____ (hereinafter referred to as "CONTRACTOR").

II.

Pursuant to that certain Standard Form of Agreement (the "Contract"), by and between Lennar Homes of Texas Land and Construction, Ltd. (the "OWNER") and CONTRACTOR, dated _____, for the construction of certain facilities known as Geronimo Heights – Phase 1 Site Development Plans, as more particularly described in the Contract (the "Facilities"), I, a duly authorized agent for CONTRACTOR, do hereby warrant and represent, for and on behalf of CONTRACTOR, that: (i) a full and complete list of all subcontractors, laborers and material suppliers who have, prior to the date set forth herein below, been engaged in the construction of or supplying material incorporated into the Facilities is set forth on Exhibit "A" attached hereto and incorporated herein by reference; (ii) CONTRACTOR and all subcontractors, laborers, and material suppliers engaged in the construction of or supplying materials incorporated into the Facilities have been paid in full for all work performed and all materials supplied prior to the date set forth herein below; and (iii) prior to the date set forth herein below, the Facilities were fully and finally completed in strict accordance with the Contract.

III.

For and in consideration of the payment to CONTRACTOR of all sums now due and owing or to be due and owing for the construction of the Facilities, CONTRACTOR does hereby waive and release any and all liens (and all rights to hereafter perfect any lien) on the Facilities, or on any property on which the Facilities are located (collectively, the Facilities and such property are referred to herein as the "Property") for any work performed or materials supplied prior to the date set forth herein below. Without limitation on the foregoing, CONTRACTOR hereby releases and discharges the Property, the OWNER and any and all other parties from all indebtedness and obligations of whatsoever character against them or the Property in connection with the construction of the Facilities and, in addition, releases and discharges the Property from any and all liens and charges of every character held by the undersigned, whether the liens be contractual, statutory, or constitutional, and further whether said liens are evidenced by lien claim affidavits or not and whether filed for record in the Office of the County Clerk of the county where the Property is located, or not; it being the intention to relinquish, and release the Property completely free and clear of all liens and lien claims of every character asserted by the undersigned. This release and waiver of liens is effective for all labor, materials, specially fabricated materials and/or services furnished up to and including the date hereof, and further

the undersigned states that all persons, parties and entities that have furnished or performed work and/or furnished materials, specially fabricated materials, and supplies for use in connection with the construction of the Facilities claiming through or under the undersigned have been fully paid all amounts that may be due and owing and the undersigned does hereby agree to hold the OWNER harmless from any loss, cost or expense incurred by virtue of any claims against them on account of the unpaid bills for labor performed or materials furnished by any such party.

EXECUTED on this the _____ day of _____, 2026.

CONTRACTOR:

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this _____ day of _____, 2026.

Notary Public

Printed Name: _____

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2026
by _____, _____ of
_____, a _____, on behalf of said _____.

Notary Public in and for the State of Texas

Printed Name: _____

My Commission Expires: _____

EXHIBIT "A"
LIST OF ALL SUBCONTRACTORS, LABORERS AND MATERIAL SUPPLIERS

All subcontractors, laborers and suppliers must sign beside paid amount to acknowledge their receipt of payment in full.

NAME OF SUBCONTRACTOR LABORER OR SUPPLIER	TYPE OF WORK	AMOUNT PAID	SIGNATURE
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____
11. _____	_____	_____	_____
12. _____	_____	_____	_____
13. _____	_____	_____	_____
14. _____	_____	_____	_____
15. _____	_____	_____	_____
16. _____	_____	_____	_____
17. _____	_____	_____	_____
18. _____	_____	_____	_____
19. _____	_____	_____	_____
20. _____	_____	_____	_____

SUBCONTRACTOR'S LIEN WAIVER

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, states as follows:

I.

My name is _____. I am _____ of _____ (hereinafter referred to as "Subcontractor").

Subcontractor has provided materials or performed work in conjunction with the construction of certain facilities known as Geronimo Heights – Phase 1 Site Development Plans (the "Facilities") as more particularly described in that one certain Standard Form of Agreement by and between Lennar Homes of Texas Land and Construction, Ltd. (the "OWNER"), and _____ ("CONTRACTOR"), dated _____ and located on property owned by Lennar.

II.

For and in consideration of the payment to Subcontractor of all sums now due and owing or to be due and owing for the construction of the Facilities, Subcontractor does hereby waive and release any and all liens (and all rights to hereafter perfect any lien) on the Facilities and on any property on which the Facilities are located (collectively, the Facilities and such property are referred to herein as the "Property") for any work performed or materials supplied prior to the date set forth herein below. Without limitation on the foregoing, Subcontractor hereby releases and discharges the Property, the OWNER and any and all other parties from all indebtedness and obligations of whatsoever character against them or the Property in connection with the construction of the Facilities and, in addition, releases and discharges the Property from any and all liens and charges of every character held by the undersigned, whether the liens be contractual, statutory, or constitutional, and further whether said liens are evidenced by lien claim affidavits or not and whether filed for record in the Office of the County Clerk of the county where the Property is located, or not; it being the intention to relinquish, and release the Property to OWNER completely free and clear of all liens and lien claims of every character asserted by the undersigned. This release and waiver of liens is effective for all labor, materials, specially fabricated materials and/or services furnished up to and including the date hereof, and further the undersigned states that all persons, parties and entities that have furnished or performed work and/or furnished materials, specially fabricated materials, and supplies for use in connection with the construction of the Facilities claiming through or under the undersigned have been fully paid all amounts that may be due and owing and the undersigned does hereby agree to hold the OWNER harmless from any loss, cost or expense incurred by virtue of any claims against them on account of the unpaid bills for labor performed or materials furnished by any such party.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed this the _____ day of _____, 2026.

(SUBCONTRACTOR)

By: _____

Printed Name: _____

Title: _____

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 2026.

Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2026 by
_____, _____ of _____, a
_____, on behalf of said _____.

Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

XI. TECHNICAL SPECIFICATIONS (NOTICE)

The materials and construction practices shall be in accordance with the Standard Specifications of Guadalupe County AND Texas Department of Transportation as presented in the latest edition, and/or as otherwise contained in this section and on the plans. Copies of these specifications are on file in the office of the ENGINEER and may be inspected by each prospective bidder during normal business hours.

In addition, the following paragraphs regarding safety shall be made a part of the TECHNICAL SPECIFICATIONS:

Safety Precautions, Programs and Trench Safety Systems

It shall be the duty and responsibility of the CONTRACTOR and all of its subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. Secs. 651 et. seq., the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all provisions of this act.

The CONTRACTOR and all of its subcontractors shall comply with all requirements of 29 C.F.R. Secs. 1926.652 and 1926.653, OSHA Safety and Health Standards, and H.B. 662, Acts of the 70th Legislature, Regular Session, and shall submit a unit price for the particular safety systems to be utilized by the CONTRACTOR for all trench excavations which exceed a depth of five feet (5').

Before commencing any trench excavation that will exceed a depth of five feet, the CONTRACTOR shall provide the OWNER with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a registered professional engineer indicating full compliance with the OSHA provisions cited above.

XII. PLANS (NOTICE)

The plans, along with the current Guadalupe County Standard Specifications and Texas Department of Transportation Standard Specifications, are under separate cover and are hereby made a part of this Contract.

XIII. GEOTECHNICAL INVESTIGATION (NOTICE)

The recommendations of Professional Service Industries, Inc., contained in their report entitled "Geronimo Heights – Streets FM 2623", dated January 29, 2025 are under separate cover and are hereby incorporated into this Contract.