



**ITB NO. 24-011
INVITATION TO BID
CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42
ELEVATED STORAGE TANK
JWSC PROJECT NO. 2213
For
BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION
BRUNSWICK, GA**

Issued Thursday, May 16, 2024

**MANDATORY Pre-bid teleconference
Tuesday, June 4, 2024, 10:00 a.m. EST**

**Call-in: 888.204.5987
Access Code: 5863965**

**Please pre-register via email to pcrosby@bgjwsc.org
no later than Monday, June 3, 2024, at 5:00 p.m.**

**Deadline for questions is Thursday, June 6, 2024, at 5:00 p.m.
EST Please submit questions via e-mail to pcrosby@bgjwsc.org**

Bids Due by 12:00 NOON EST Tuesday, June 18, 2024, to:

**Purchasing Division
Pam Crosby, Director of Purchasing
Brunswick-Glynn County Joint Water and Sewer Commission
1703 Gloucester Street
Brunswick, Georgia 31520
(912) 261-7100**

**Bids should be clearly labeled as follows:
"ITB No. 24-011 Construction Services for North Mainland Exit 42 Elevated Storage Tank
JWSC Project No. 2213"**

**Submit responses in hard copy only; electronic or fax responses will not be accepted.
Responses received after the deadline or at any other location will not be accepted.**

**FOR COMPLETE DETAILS OF THIS SOLICITATION, please visit the BGJWSC website, utilizing the following
link: <http://www.bgjwsc.org/departments/procurement/>**

Brunswick - Glynn County Joint Water and Sewer Commission

BIDDING
DOCUMENTS AND
TECHNICAL
SPECIFICATIONS

**CONSTRUCTION SERVICES FOR NORTH
MAINLAND EXIT 42 EST
JWSC PROJECT NO. 2213**

May 16, 2024

**BIDDING
DOCUMENTS AND
TECHNICAL
SPECIFICATIONS**

ITB 24-011 CONSTRUCTION SERVICES NORTH MAINLAND EXIT 42 EST
JWSC PROJECT NO. 2213

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- A. June 15, 2023, Terracon Geotechnical Engineering Investigation, Proposed Elevated Water Storage Tank, Brunswick - Glynn County Joint Water & Sewer Commission, Glynn County, Georgia, Terracon Project No. EQ237180.
- B. July 18, 2023, Terracon Geotechnical Engineering Investigation, Exit 42 Elevated Storage Tank, Brunswick - Glynn County Joint Water & Sewer Commission, Glynn County, Georgia, Terracon Project No. ES235113.
- C. United States Army Corp of Engineers, Wetland Encroachment Letter
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PERMITS

The following permits have been obtained or are anticipated to be obtained by the Owner, with Contractor's assistance prior to construction:

Permit	Permit No.	Issued Date
Georgia Environmental Protection Division Drinking Water Project		

All other permits are the responsibility of the Contractor, and the Contractor is responsible for all associated permit fees.

INVITATION TO BID 24-011

CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK

JWSC PROJECT NO. 2213

Sealed bids for **ITB 24-011 CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK – JWSC Project No. 2213** will be received by the Brunswick-Glynn County Joint Water and Sewer Commission at the JWSC's Office of the Procurement Director, 1703 Gloucester Street, Brunswick, Georgia 31520 until ***12:00 NOON EST, Tuesday, June 18, 2024***, at which time and place they will be publicly opened and read aloud. No submitted bid may be withdrawn after the scheduled closing time for receipt of bids for a period of sixty (60) days.

The work to be performed under this project consists of the furnishing of all materials, tools, equipment, labor and incidentals necessary for the design, manufacture, delivery, erection, painting, disinfection and testing of a 750,000-gallon composite elevated storage tank. The tank will be located in the JWSC North Mainland Service District in the general vicinity of I-95 Exit 42 (southwest of the interchange) Glynn County, Georgia, with an assigned address of 118 Cherokee Trail, Brunswick, Georgia, 31525. The tank is to be completed with all accessories specified herein, and is to be erected on foundations to be designed and constructed by the Tank Contractor. The tank shall meet all the requirements of AWWA D107 Standard for Composite Elevated Water Storage Tank. Clearing, grading, grubbing and foundation based upon Geotechnical Design are also included in this scope of work.

The Contractor shall have completed at least five (5) composite elevated tanks with a minimum capacity of 500,000 gallons or greater. All bidders must have a State of Georgia Utility Contractor License and must employ a state "Utility Manager" certificate holder who will have oversight of all the work. The contracting company shall own their fabrication facilities. Divided responsibilities between erection and fabrication will not be allowed. A qualified supervisor employed by the contractor shall be on site at all times during construction of the concrete to support the structure and water tank.

All updates for this solicitation will be posted and available on the JWSC website. Plans and Specifications are available on the JWSC website utilizing the following link:
<https://www.bgjwsc.org/departments/procurement/>

A **mandatory** pre-bid teleconference will be held on **Tuesday, June 4, 2024, at 10:00 a.m. EST**. There will be no site visit for this meeting. Please pre-register for the call via email, pcrosby@bgjwsc.org no later than Monday, June 3, 2024, at 5:00 p.m. to obtain login credentials for the call. The Bidder is encouraged to examine the location of the work and inform themselves fully as to the conditions present along the proposed route. A dropbox link that contains site videos and photos will be given to all registered pre-bid attendees. Questions regarding this solicitation shall be made in writing to the Purchasing Director, Pam Crosby, via email: pcrosby@bgjwsc.org no later than Thursday, June 6, 2024, at 5:00 p.m. Requests for clarification received after this date will not be considered. All responses to submitted questions will be issued via addendum to pre-bid attendees and posted on the JWSC website for reference.

A bid bond of 5% of the lump sum bid for the submitted bid amount is due with the bid package. Performance and Payment Bonds in the amount of 100% of the contract amount and in accordance

with Georgia law with be required as part of the contract execution. The Bid Bond shall be forfeited to the JWSC as liquidated damages if the Bidder fails to execute the contract and provide Performance and Payment Bonds within 10 days after being notified that they have been awarded the contract.

JWSC reserves the right to reject any or all bids and to waive informalities and make a decision in the best interests of the JWSC. Bids shall be accompanied by a bid bond or certified cashier's check in an amount not less than 5% of the base bid. All bonds shall be by a surety company licensed in Georgia with an "A" minimum rating of performance and a financial strength of at least five times the contract price as listed in the most current publication of "Best's Key Rating Guide Property Liability." Performance and Payment Bonds, each in an amount equal to 100% of the contract price shall be required of the successful bidder if contract is awarded. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the bond.

Owner reserves the right to reject any or all Bids, including without limitation, the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes it would not be in the best interest of the Project to make an award to 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 the Owner.

The Brunswick-Glynn County Joint Water and Sewer Commission provides equal opportunity for all businesses and does not discriminate against any person or business because of race, color, religion, sex, national origin, disability, or veteran status. This policy ensures all segments of the business community have access to supplying the goods and services needed by the JWSC. The JWSC reserves the right to reject any and all bids, waive technicalities and make an award in the best interest of the JWSC.

Submit responses in hard copy only; electronic or fax responses will not be accepted. Please provide (1) original and (1) electronic (USB or CD copy). Package exterior shall include Contractor's License number and name on the package exterior. Bids should be clearly labeled as follows: **ITB No. 24-011 "CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK - JWSC PROJECT NO. 2213"** and also include the Utility Contractor's License number and name. Late bid packages or packages received at any other locations will not be accepted.

Instructions to Bidders

1. Intent and Timeline

It is intended that the Instructions to Bidders, General Conditions, Construction Plans and Technical Specifications shall define and describe the complete work to which they relate. Requests for clarification and all questions during the bidding period must be submitted in writing via e-mail to the Director of Procurement, Pam Crosby at pcrosby@bgjwsc.org on or before **5:00 p.m. EST on Thursday, June 6, 2024**. Requests for clarification received after this date will not be considered. Responses to requests for clarification and questions will be issued by addendum to all qualified bidders and will also be posted on the JWSC website (www.bgjwsc.org). The bid due date is **NOON 12:00 EST on Tuesday, June 18, 2024**.

Timeline	
Event	Date
Solicitation Release Date	Thursday, May 18, 2024
Registration Deadline Pre-Bid Teleconference	Monday, June 3, 2024 - 5:00 p.m. EST
MANDATORY Pre-Bid Teleconference	Tuesday, June 4, 2024 – 10:00 a.m. EST
Deadline for Questions	Thursday, June 6, 2024 – 5:00 p.m. EST
Final Addendum for Questions	Tuesday, June 11, 2024 – 5:00 p.m. EST
Bids Due	Tuesday, June 18, 2024 – 12:00 NOON EST
JWSC Initial Staff and EOR Review Complete Reference Checks, Finalize Bid Tab, and Award Recommendation Prepare Award Recommendation Memos for Committee and Commission Meetings	Friday, July 12, 2024 - NOON
Anticipated Award Date	Thursday, July 18, 2024 – 2:00 p.m. EST
Construction Contract Execution	No later than August 1, 2024
Pre-Construction / Kick-off Meeting w/ Selected Contractor and Notice To Proceed Date Selected and Issued	August - September 2024

2. Work to be Done

The work to be performed under this project consists of the furnishing of all materials, tools, equipment, labor and incidentals necessary for the design, manufacture, delivery, erection, painting, disinfection and testing of a 750,000-gallon composite elevated storage tank. The tank will be located in the JWSC North Mainland Service District in the general vicinity of I-95 Exit 42 (southwest of the interchange) Glynn County, Georgia, with an assigned address of 118 Cherokee Trail, Brunswick, Georgia, 31525. The tank is to be completed with all accessories specified herein, and is to be erected on foundations to be designed and constructed by the Tank Contractor. The tank shall meet all the requirements of AWWA D107 Standard for Composite Elevated Water Storage Tank. Clearing, grading, grubbing and foundation based upon Geotechnical Design are also included in this scope of work.

The contracting company shall own their fabrication facilities. Divided responsibilities between erection and fabrication will not be allowed.

All bidders must have a State of Georgia Utility Contractor License and must employ a state “Utility Manager” certificate holder who will have oversight of all the work. A qualified supervisor employed by the contractor shall be on site at all times during construction of the concrete to support the structure and water tank.

The Contractor shall have completed at least five (5) composite elevated tanks with a minimum capacity of 500,000 gallons.

3. Site Examination

A **mandatory** pre-bid teleconference will be held on **Tuesday, June 4, 2024, at 10:00 a.m. EST**. There will be no site visit for this meeting. Please pre-register for the call via email, pcrosby@bgjwsc.org no later than Monday, June 3, 2024, at 5:00 p.m. to obtain login credentials for the call.

The Bidder is encouraged to examine the location of the work and inform themselves fully as to the conditions present along the proposed route and site. A dropbox link that contains site videos and photos will be given to all registered pre-bid attendees.

Questions regarding this solicitation shall be made in writing to the Purchasing Director, Pam Crosby, via email: pcrosby@bgjwsc.org no later than **Thursday, June 6, 2024, at 5:00 p.m. EST**. Requests for clarification received after this date will not be considered. All responses to submitted questions will be issued via addendum to pre-bid attendees and posted on the JWSC website for reference.

4. Criteria for Qualification

The work specified in this project requires significant previous experience and expertise in similar work to avoid negative impacts to public safety and the environment. Therefore, the Contractor performing the work shall be qualified, in JWSC’s judgment, to complete the elevated storage tank construction project work specified herein. The Contractor shall submit substantiating evidence of qualifications, in accordance with the provisions of this Section, the Instructions to Bidders and Section 1.2.A of the Technical Specifications with the Bid response. Failure to submit the required documentation may cause the Contractor to be declared unqualified to perform the scope of work. In order to qualify to perform work specified in this request for bid the

Contractor must provide evidence satisfactory to JWSC, including the following:

1. The Contractor shall have completed at least five (5) composite elevated tanks with a minimum capacity of 500,000 gallons. A copy of ***Similar Projects Reference Form*** has been provided to collect and include this information in your bid package.
2. The Contractor must be licensed as a Utility Contractor by the State of Georgia to perform work for the Brunswick-Glynn County Joint Water and Sewer Commission.
3. The Contractor must employ a state "Utility Manager" certificate holder who will have oversight of all work.

In determining the Applicant's qualifications, additional information may be requested of the low bidder and the following factors will be considered:

- Company experience
- Individual staff experience and qualifications
- References on completed projects
- Financial stability (including bonding capacity and insurance coverage)
- Safety record

(JWSC shall have sole authority to determine the adequacy of representative projects, company and staff experience, financial stability and safety record.)

5. Bonds and Security

A bid guarantee in an amount not less than five percent (5%) of the amount bid must accompany each bid. Acceptable forms of bid guarantees are a bid bond, certified check or cashier's check made payable to the Brunswick-Glynn County Joint Water and Sewer Commission. The JWSC will return bid guarantees, other than bid bonds, to unsuccessful bidders as soon as practicable, but not sooner than the execution of a contract with the successful bidder. If for any reason whatsoever the successful Bidder withdraws from the competition after opening the bids, or refuses to execute the Contract, the Owner will proceed on the Bid Bond or deposit the certified check or cashier's check as damages for the Bidder's failure to enter into a contract for the work.

Performance and Payment bonds, each in an amount equal to one hundred percent (100%) of the contract amount will be required of the successful Bidder at the time of contract execution.

All bonds shall be by a surety company licensed in Georgia with an "A" minimum rating of performance and a financial strength of at least five times the contract price as listed in the most current publication of "Best's Key Rating Guide Property Liability." Performance and Payment Bonds, each in an amount equal to 100% of the contract price shall be required of the successful bidder if contract is awarded. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the bond.

The Bonds and Surety shall be subject to approval by the JWSC legal counsel.

Attorneys-in-fact who sign and seal Bid Bonds or Contract Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

6. Insurance

Appropriate insurance coverage for the Contractor is required. A copy of the Insurance Requirements for Contractors for Brunswick-Glynn Joint Water and Sewer Commission is attached and included as part of

the Contract Forms Part E. . The BGJWSC will require current certificates of insurance indicating full coverage prior to executing contracts with the successful Bidder.

7. Georgia Security & Immigration Compliance Act

Applicants are advised that all Contractors performing work for Brunswick-Glynn Joint Water and Sewer Commission must comply with the requirements of O.C.G.A. Sec. 13-10-91 (the “Georgia Security & Immigration Compliance Act”) and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor. The procedures and requirements of the Brunswick-Glynn Joint Water and Sewer Commission Government related to the Georgia Security & Immigration Compliance Act, along with the affidavits and a compliance certification form are included in the bid documents of all Brunswick-Glynn Joint Water and Sewer Commission projects. Completed affidavits and forms are to be submitted with the bid on a project or at the time of contract execution for an awarded project, as indicated in the specific bid documents. Bids submitted without the required affidavits will be considered non-responsive and will be disqualified from further consideration.

8. Significant changes; obligation to communicate

During the course of the project, selected qualified firm must submit revised information to the BGJWSC at any time any of the following changes occur.

- a. Acquisition of contractor or name change;
- b. Change in financial status that could adversely affect the ability of the Contractor to perform the work;
- c. Changes that adversely affect the Contractor’s ability to obtain Bonds and/or insurance required to perform work;
- d. Material changes in staffing, experience, or equipment;
- e. Any other changes that could alter the Contractor’s qualification standing with the BGJWSC.

9. Other

The qualification of a Contractor will not deprive the Brunswick-Glynn Joint Water and Sewer Commission of the right to reject any bid, where other circumstances and developments have, in the opinion of the BGJWSC, changed the qualification or responsibility of the Contractor.

10. Determination of Successful Bidder

The contract will be awarded to the lowest responsive, responsible Bidder; if awarded.

The determination of the Bidder's *responsibility* will be made by the JWSC based on whether the Bidder:

1. Meets the minimum qualification requirements established by JWSC to submit a bid for the project,
2. maintains a permanent place of business,
3. has the appropriate technical experience,
4. has adequate plant and equipment to do the work properly and expeditiously,
5. has suitable financial means to meet obligations incidental to this work, and
6. is appropriately licensed for the described work in the State of Georgia.

The Bidder shall furnish, to the JWSC, all such information and data for this purpose as the JWSC may request. The JWSC reserves the right to reject any bid if the evidence submitted by, or

investigation of, the Bidder fails to satisfy the JWSC that he is properly qualified to carry out the obligations of the Contract.

The determination of *responsiveness* will be made by the JWSC based on a consideration of whether the Bidder has submitted a complete Bid Form without irregularities, excisions, special conditions, or alternative bids for any item unless specifically requested in the Bid Form.

11. Bid Alternates

Bidders are requested to review bid alternates, if any, as outlined on the Bid Form.

12. Contract Time

Contract time shall consist of **four hundred fifty (450) consecutive calendar days** for the completion of work, to be computed from the date of the Notice to Proceed. Time is of the essence and is an essential element of this Agreement, and the Contractor shall pay to the JWSC, not as a penalty, but as liquidated damages, the sum of **One-thousand Dollars (\$1,000.00)** for each calendar day that he shall be in default of completing the work within the time limit named herein.

13. Bid Form

Bids shall be submitted on the Bid Form included. Bids shall be based upon lump sum prices as indicated by the Bid Form. Where errors or omissions result in discrepancies in proposal totals, prices per unit as submitted will be binding. Final payment will be based upon completion and acceptance of the work by the JWSC.

14. Submission of Bids

Bids shall be submitted at the time and place designated in the Invitation for Bids. On the outside of the envelope containing the Bid shall be noted the following: **SEALED BID: ITB 24-011 CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK - JWSC PROJECT NO. 2213**. The outside of the envelope containing the Bid also shall be marked with the Bidder's name, address and Georgia Utility Contractor's License Number.

The Bidder shall submit ***one (1) original Bid, one (1) duplicate (hard copy) and one (1) electronic copy (USB or CD)*** in an opaque sealed envelope at the time and place indicated in the Invitation. If there is a discrepancy between the electronic copy and the hard copy, the hard copy will prevail.

All blanks in the Bid must be completed and written or printed in ink.

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 to by the secretary or an assistant secretary of the corporation. The corporate address and state of incorporation must be shown on the Bid Form.

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

The address, telephone number, facsimile number and email address for communications regarding the Bid must be shown on the Bid Form.

All names and titles must be typed or printed in ink below the signature.

The Bid shall contain an acknowledgement of receipt of all Addenda, if any. The numbers of each Addendum must be filled in on the Bid Form.

The following forms must also be included in the bid submission package:

- ✓ ***Bid Form (acknowledging all addenda)***
- ✓ ***5% Surety – may be a Bid Bond, Certified Check or Cashier's Check***
- ✓ ***Affidavit for Contractor Certification of Qualification Application Content***
- ✓ ***Form for Similar in Nature Project References (1) form for each project – (5) projects are required***
- ✓ ***E-Verify Affidavit Contractor*** – requirement of O.C.G.A. § 13-10-91
- ✓ ***E-verify Affidavit Subcontractor*** (if applicable)
- ✓ ***EEO Representation Affidavit***

The submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of the IFB, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of performance of the Project and furnishing of the Work.

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**BRUNSWICK-GLYNN JOINT WATER AND SEWER COMMISSION
APPLICATION FOR QUALIFICATION
NORTH MAINLAND EXIT 42 EST PROJECT NO. 2213**

**AFFIDAVIT FOR CONTRACTOR CERTIFICATION OF QUALIFICATION
APPLICATION CONTENT**

I, the undersigned, _____ (typed name) as the authorized

representative for _____ (typed company name), a contractor interested in being qualified for bidding on the noted Brunswick-Glynn Joint Water and Sewer Commission project, do hereby attest that all statements and representations made herein are true and correct to the best of my knowledge. These statements are made openly and freely without intent to influence or embellish actual conditions or circumstances that occurred.

I understand that the Brunswick-Glynn Joint Water and Sewer Commission will investigate any and all statements and representations in this application made by my firm and me, and we freely give our permission for them to do so. Should releases be required by any of our professional, financial, or bonding institutions to release verification of the enclosed data, I have provided them in the application package. I agree to waive any claims against the Brunswick-Glynn Joint Water and Sewer Commission for the release of the information necessary to evaluate this application.

I am hereto sworn _____ (Signature)

_____ (Name and title)

_____ (Firm name)

This date _____, 2024

County of _____ State of _____

The foregoing instrument was acknowledged before me this _____ day of 2024.

_____ (Notary signature)

_____ (typed Notary name)

My commission expires _____

(Notary Seal)

Submit information regarding your “Company Experience” on the attached Form for Similar Projects and References to demonstrate that your firm meets the criteria described in the Instructions section. Include detailed information on:

- The Contractor shall have completed at least five (5) composite elevated tanks with a minimum capacity of 500,000 gallons.
- The names, addresses, location of the jobs performed.
- Contract amounts and dates of start/completion.
- Reference contact names with telephone numbers and e-mail must be indicated on the form. Please be complete and ensure that all reference contact information is accurate and current.

Submit one Form for Similar Projects and References for each project, using the blank form attached. Supplemental information in other formats may also be attached to the Form if desired; however, a completed Form must be submitted for each project.

**BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION
APPLICATION FOR QUALIFICATION
NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK
PROJECT NO. 2213**

FORM FOR SIMILAR IN NATURE PROJECTS AND REFERENCES

Name of Contractor: _____

Project Name: _____

Location: _____

Project Owner: _____

Contact Person: _____

Telephone Number: _____

Email Address: _____

Project Engineer: _____

Contact Person: _____

Telephone Number: _____

Email Address: _____

Contract Dates: FROM _____ TO _____

Date of Notice to Proceed: _____

Contract Amount: Original: \$ _____

Brief Description of Project (INCLUDE TANK SIZE):

COPY THIS FORM FOR SIMILAR IN NATURE PROJECTS

(each project should have its own form)

**QUALIFICATION
NORTH MAINLAND EXIT 42 EST - PROJECT NO. 2213**

GENERAL INSURANCE REQUIREMENTS

BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION APPLICATION FOR QUALIFICATION NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK PROJECT NO. 2213

The following requirements are included in each construction contract issued by the Brunswick- Glynn Joint Water and Sewer Commission Water System. The Applicant must provide evidence of coverage and applicable endorsements at the time the contract is executed. Note that the need for Builder's Risk coverage will be assessed by the Owner on a project-by-project basis.

INSURANCE REQUIREMENTS FOR CONTRACTORS

The Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

Attention: The Contractor is advised that certain provisions contained herein require specific endorsements of your insurance policy. Do not assume that your standard policy will be suitable to meet the requirements of Brunswick-Glynn Joint Water and Sewer Commission. The submittal of incomplete or non-conforming documents will delay the execution of the Contract/Agreement and the issuance of the Notice-to-Proceed for the Project.

1. MINIMUM LIMITS OF INSURANCE

- A. Statutory Workers' Compensation Insurance. The statutory limits as established by the General Assembly of the State of Georgia shall be met by Contractor and/or subcontractor. The workers' compensation policy must include Coverage B - Employer's Liability with minimum limits of:

Bodily Injury by Accident -\$1,000,000 each accident

Excess liability coverage may be used in combination with the base policy to obtain these limits. The Contractor shall require all subcontractors, of any tier, performing work under the contract to obtain an insurance certificate showing proof of Workers' Compensation and Employers Liability Coverage or shall certify that the subcontractors are covered by the Contractor's insurance.

- B. Commercial General Liability Insurance. The Contractor shall procure and maintain a Commercial General Liability Insurance Policy covering bodily injury, property damage liability and personal injury. The policy or policies must be on an "occurrence" basis ("Claims Made" coverage is not acceptable) insuring personal injury and property damage against the hazards of premises and operations, products and completed operations, blasting and explosion, collapse, underground

damage, independent contractor's and contractual liability (specifically covering the indemnity) and have the minimum limits of liability listed below. The Commercial General Liability policy shall also include contractual liability coverage. The Commercial General Liability policy must include separate aggregate limits per project. Excess liability coverage may be used in combination with the base policy to obtain the following limits.

Premises and Operations \$1,000,000 per Occurrence
Products and Completed Operations \$1,000,000 per Occurrence Personal
Injury \$1,000,000 per Occurrence
Contractual \$1,000,000 per Occurrence

- C. Auto Liability Insurance. The Contractor shall procure and maintain a Business Automobile Liability Policy with liability limits of not less than \$1,000,000 per person and \$1,000,000 per occurrence or a policy with a Combined Single Limit of not less than \$1,000,000 covering any owned, non-owned or hired autos. Excess liability coverage may be used in combination with the base policy to obtain these limits. The form of coverage must be as follows and/or cover the following areas:

Comprehensive form covering all owned, non-owned, leased, hired, and
borrowed vehicles
Additional Insured Endorsement Contractual
Liability

- D. Commercial Umbrella Liability Insurance. The Contractor shall provide Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability, and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The Umbrella coverage shall follow form with the Umbrella limits required as follows:

\$2,000,000 Combined Single Limits per Occurrence

- E. Builder's Risk Insurance. The Contractor shall secure "All-Risk" type of Builder's Risk insurance covering work performed under the Contract, and materials equipment or other items to be incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy limit shall be for 100% of the value of the Contract. The policy shall cover not less than losses due to fire, flood, explosion, hail, lightning, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke or other cataclysmic events, until the date of final acceptance of the work.

The making of progress payments to the Contractor shall not be construed as relieving the Contractor or his subcontractors or the insurance company or companies providing the coverage described herein of responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance.

2. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Additional Insured Endorsement – General Liability, Automobile Liability, and Umbrella Liability
 - 1. The “Owner, Construction Manager, Engineer and their respective officers, officials, employees, and volunteers” are to be covered as Additional Named Insureds as respects all liabilities to be insured against by the policies described in Subsections 1.B, 1.C, and 1.D above.
 - 2. The coverage shall contain no special limitation on the scope of protection afforded to the Owner, Construction Manager, Engineer and their respective officers, officials, employees, or volunteers. Nothing in this paragraph shall be construed to require the Contractor to provide liability insurance coverage to the Owner, Construction Manager, or Engineer for claims asserted against the Owner, Construction Manager, or Engineer for their sole negligence.
 - 3. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 4. Provide a separate endorsement for each policy, signed by the authorized agent and citing individual policy numbers.
 - 5. The coverage shall be primary and shall contain no special limitations on the scope of protection afforded to the Certificate Holder/Additional Insured.
 - 6. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion.
 - 7. In lieu of a separate endorsement, a copy of the declaration page for the Umbrella Liability Policy may be provided, listing the policy numbers for each type of insurance covered by the Umbrella.
- B. Waiver of Subrogation Endorsement – Workers' Compensation and Employers' Liability Coverage
 - 1. The insurer shall agree to waive all rights of subrogation against the Owner, Construction Manager, Engineer and their respective officers, officials, employees, and volunteers for losses arising from work performed by the Contractor for the Owner under the Contract.
 - 2. Provide a separate endorsement for the policy, signed by the authorized agent and citing individual policy number.
- C. Notice of Cancellation Endorsements – General Liability, Automobile Liability,

Umbrella Liability, and Workers' Compensation

1. Each insurance policy shall be endorsed to state that should any coverage be suspended, voided, cancelled or reduced in coverage or in limits, thirty days prior written notice will be given to the Certificate Holder. Notice of cancellation for non-payment of premium shall be not less than ten days.
2. Provide a separate endorsement for each policy, signed by the authorized agent and citing individual policy numbers.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, Construction Manager, Engineer and their respective officers, officials, employees, or volunteers.

D. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, Construction Manager, Engineer and their respective officers, officials, and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

All deductibles shall be paid by the Contractor.

E. Failure of Insurers

The Contractor is responsible for any delay resulting from the failure of its insurance carriers to furnish proof of coverage in the prescribed form. The summary table shown below in paragraph 4.C can serve as a checklist to confirm the submittal of all required endorsements.

F. Contractor's Property and Equipment

The Contractor is responsible for insuring its own property and equipment.

3. ACCEPTABILITY

- A. The insurance purchased by the Contractor must be issued by a company licensed by the Insurance Commissioner to transact business in the State of Georgia or by a company acceptable to the State if the company is an alien insurer.
- B. Insurance is to be placed with insurers with a Best Policyholders Rating of "A" or better and with a financial size rating of Class VII or greater, or be otherwise acceptable to the Owner.

4. VERIFICATION OF COVERAGE

- A. The Contractor shall furnish the Owner with four original Certificates of Insurance, each with endorsements effecting coverage required by this Section of the Contract Documents. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- B. The insurance certificate must provide the following:
1. Name and address of authorized agent.
 2. Name and address of insured. Name of insured must appear exactly as shown on Contractor's seal on Contract with Owner
 3. Name of insurance company(ies).
 4. Description of policies.
 5. Policy number(s).
 6. Policy period(s).
 7. Name and address of Owner as Certificate Holder (see Subsection D below).
 8. Brunswick-Glynn County Joint Water and Sewer Commission Program Name and Number.
 9. Signature of authorized agent.
 10. Telephone number of authorized agent.
- C. The required endorsements to be submitted are summarized in the following table:

ENDORSEMENT SUMMARY TABLE

Type of Insurance	Endorsement
General Liability	Owner, etc. as Additional Insured
General Liability	Notice of Cancellation
Automobile Liability	Owner, etc. as Additional Insured
Automobile Liability	Notice of Cancellation
Umbrella Liability	Owner, etc. as Additional Insured ¹
Umbrella Liability	Notice of Cancellation
Workers' Compensation	Waiver of Subrogation
Workers' Compensation	Notice of Cancellation

¹Declarations pages may be submitted for Umbrella policies

D. The Certificate Holder must be shown as:

Brunswick-Glynn Joint Water and Sewer Commission
Attention: Office of the Director
Procurement Division 1703 Gloucester
Street
Brunswick, GA 31520

The certificates and endorsements naming additional insureds and indicating required waivers are to be submitted with the executed Agreement/Contract and Performance and Payment Bonds, for approval by the Owner before work commences. The Owner reserves the right to require the submittal of complete, certified copies of all required insurance policies at any time.

5. SUBCONTRACTORS

Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. Coverage for subcontractors shall be subject to all of the requirements stated herein. Owner may request evidence of subcontractor's insurance. Contractor shall ensure that all subcontractors comply with the insurance requirements and provisions of this Section.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY

BID FORM

DATE SUBMITTED:

PROJECT NAME:

**CONSTRUCTION SERVICES FOR
NORTH MAINLAND EXIT 42 ELEVATED STORAGE TANK
JWSC PROJECT NO. 2213
BRUNSWICK, GLYNN COUNTY, GEORGIA**

SUBMITTED TO:

Brunswick-Glynn Joint Water and Sewer Commission
1703 Gloucester Street
Brunswick, Georgia 31520

SUBMITTED BY:

Company Name:

Address:

Georgia Utility Contractor's License No.

Acknowledge Receipt of Addenda Numbers:

(list each number individually)

Bid Table

Item	Description	Unit	Quantity	Unit Price	Item Price
1	Site Work	LS	1		
2	Tank Foundation	LS	1		
3	750,000 Gallon Composite Elevated Storage Tank	LS	1		
4	Electrical and SCADA Cash Allowance	LS	1	\$100,000.00	\$100,000.00
5	Logo Cash Allowance	LS	1	\$ 20,000.00	\$ 20,000.00

Total Bid (Items 1 through 5)

(Words)

(\$ _____)

(Numbers)

The BIDDER declares that they have examined the site of the work and informed themselves fully in regard to all conditions pertaining to the place where the work is to be done; that they have examined the plans and specifications for the work and the documents relative thereto; and has read all General and Special Conditions furnished prior to the opening of bids; that they have satisfied themselves relative to the work to be performed.

This Bid is submitted to Brunswick-Glynn County Joint Water and Sewer Commission (BGJWSC) by the undersigned who is an authorized officer of the company and said company is licensed to do business in Georgia. Further, the undersigned is authorized to make these representations and certifies these representations are valid. The Bidder recognizes that all representations herein are binding on the Company and failure to adhere to any of these commitments, at the BGJWSC's option, may result in a revocation of the granted contract.

Consent is hereby given to the BGJWSC to contact any person or organization in order to make inquiries into legal, character, technical, financial, and other qualifications of the Bidder. The Bidder understands that, at such time as the BGJWSC decides to review this Bid, additional information may be requested. Failure to supply any requested information within a reasonable time may result in the rejection of the Bid with no resubmittal rights.

The successful Bidder understands that the BGJWSC, after considering the legal, financial, technical, and character qualifications of the Bidder, as well as what in the BGJWSC's judgment may best serve the interest of its rate payers and employees, may grant a contract. Any contract issued will be on the basis of the Bidder's service, financial plans and arrangements being feasible and adequate to fulfill the conditions set forth in this project and the successful Bidder's response.

The undersigned further agrees that, in case of failure on his part to execute the said Contract and Bonds within ten (10) consecutive calendar days after receipt of the conformed Contract Documents, the check or bid bond accompanying this Bid and the monies payable thereto, shall be paid into the funds of the Owner as liquidated damages for such failure otherwise, the check or Bid Bond accompanying this Bid shall be returned to the undersigned.

The Bidder further agrees to accomplish all work and provide all material for the lump sum price submitted and understands that the lump sum price is subject to adjustment by either increase or decrease, only through a properly executed change order. The Bidder further proposes and agrees to commence work under this contract, with adequate force and equipment, on a date to be specified in a written order of the Owner and shall fully complete all work hereunder within four hundred and fifty (450) consecutive calendar days from and including said date.

The successful Bidder understands that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same, and is in all respects fair and without collusion or fraud. I understand that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. By signing this affidavit, I solemnly swear that I, nor any other person associated with me or my business, corporation or partnership, has prevented or attempted to prevent competition in bidding or Bids of said project or from submitting a bid for this project by any means whatever. Lastly, I swear that neither I, nor any other person associated with me, or my business, Corporation or partnership has caused or induced any other bidder to withdraw his/her bid from consideration for this project. Said oath is filed in accordance with the requirements set forth in O.C.G.A. § 36-91-21 (e).

This _____ day of June 2024.

Company Name: (Please Type or Print)

Name: _____

Street: _____

City: _____

State: _____ Zip: _____

Fax Number: (_____) _____

Email: _____

Person Authorized to Sign:

Name: _____

Signature: _____

Title: _____

Telephone Number: (_____) _____

Sworn to and subscribed before me this the _____ day of _____ 2024.

NOTARY PUBLIC:

(SEAL)

Name: _____

My Commission Expires: _____

BID BOND

**State of Georgia City
of Brunswick County
of Glynn**

KNOW ALL MEN BY THESE PRESENT, that we, _____

_____, as Principal, and

_____, as Surety, are held and firmly bound

unto the Brunswick-Glynn Joint Water and Sewer Commission (BGJWSC) in the not to exceed sum
of _____ Dollars

(\$_____) lawful money of the United states, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assign, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted to the BGJWSC a Bid for:

ITB NO. 24-011 CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 EST

JWSC PROJECT NO. 2213

NOW THEREFORE, the conditions of this obligation are such that if the Bid be accepted, the Principal shall, within fifteen days (15) days after receipt of conformed Contract Documents, execute a contract in accordance with the Bid upon the terms, conditions and prices set forth therein, and in the form and manner required by the BGJWSC and execute a sufficient and satisfactory Performance Bond and Payment bond payable to the BGJWSC, each in an amount of one hundred percent (100%) of the total contract price, in form and with security satisfactory to the JWSC, then this obligation shall be void; otherwise, it shall be and remain in full force and virtue in law; and the Surety shall, upon failure of the Principal to comply with any or all to the foregoing requirements within the time specified above, immediately pay to the aforementioned JWSC, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

This bond is given pursuant to and in accordance with the provisions of O.C.G.A. § 36-91- 50 *et seq.*, as amended from time to time, and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereinafter enacted and these are hereby made a part hereof to the same extent as if set out herein in full.

(Continued on Next Page)

IN WITNESS WHEREOF, the said Principal has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on

This the _____ day of _____, 2024.

PRINCIPAL: _____

Signed and sealed in the
Presence of:

By: _____

Title: _____

1. _____

(Seal)

2. _____

SURETY: _____

Signed and sealed in the
Presence of:

By: _____

Title: _____

(Seal)

1. _____

2. _____

E-VERIFY CONTRACTOR AFFIDAVIT AND AGREEMENT

Georgia Security Immigration and Compliance (GSIC) Act

The Brunswick-Glynn County Joint Water and Sewer Commission and Contractor agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, *stating affirmatively that the individual, firm, or corporation which is contracting with the Brunswick-Glynn Joint Water and Sewer Commission has registered with and is participating in the federal work authorization program known as: "E-Verify", web address <https://e-verify.uscis.gov/enroll/> operated by the United States Citizenship and Immigration Services Bureau of the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.* The undersigned Contractor also verifies that he/she/it is using and will continue to use the federal work authorization program throughout the contract period.

The undersigned Contractor agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to the contract with the Brunswick-Glynn Joint Water and Sewer Commission, Contractor will secure from each subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees the Contractor will advise the Brunswick-Glynn County Joint Water and Sewer Commission of the hiring of a new subcontractor and will provide the Brunswick-Glynn County Joint Water and Sewer Commission with a Subcontractor Affidavit attesting to the Subcontractor's name, address, user identification number, and date of authorization to use the Federal Work Authorization Program within five (5) days of the hiring before the Subcontractor begins working on the Project. Contractor also agrees to maintain all records of such compliance for inspection by the Brunswick-Glynn County Joint Water and Sewer Commission at any time and to provide a copy of each such verification to the Brunswick-Glynn County Joint Water and Sewer Commission at the time the subcontractor(s) is retained to perform such services.

(Continued on Next Page)

E-Verify Employment Eligibility Verification User I.D. Number

Date of Authorization to Use Federal Work Authorization Program

Name of Contractor

Title of Authorized Officer or Agent of Contractor

Signature and Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this the _____ day of _____, 2024.

NOTARY PUBLIC:

Name: _____

My Commission Expires: _____

(NOTARY SEAL)

As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

E-VERIFY SUBCONTRACTOR AFFIDAVIT AND AGREEMENT

Georgia Security Immigration and Compliance (GSIC) Act

The Brunswick-Glynn County Joint Water and Sewer Commission and Subcontractor agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, *stating affirmatively that the individual, firm, or corporation which is contracting with _____ a Contractor contracting with the Brunswick-Glynn Joint Water and Sewer Commission has registered with and is participating in the federal work authorization program known as: E-Verify”, web address <https://e-verify.uscis.gov/enroll/> operated by the United States Citizenship and Immigration Services Bureau of the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91.* The undersigned Subcontractor also verifies that he/she/it is using and will continue to use the federal work authorization program throughout the contract period.

The undersigned Subcontractor agrees that, should it employ or contract with any other subcontractor(s) in connection with the physical performance of services pursuant to the contract with the Brunswick-Glynn Joint Water and Sewer Commission, Subcontractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13- 10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Subcontractor further agrees the Subcontractor will advise the Brunswick- Glynn Joint Water and Sewer Commission of the hiring of a new subcontractor and will provide the Brunswick-Glynn Joint Water and Sewer Commission with a Subcontractor Affidavit attesting to the Subcontractor’s name, address, user identification number, and date of authorization to use the Federal Work Authorization Program within five (5) days of the hiring before the Subcontractor begins working on the Project. Subcontractor also agrees to maintain all records of such compliance for inspection by the Brunswick-Glynn Joint Water and Sewer Commission at any time and to provide a copy of each such verification to the Brunswick-Glynn Joint Water and Sewer Commission at the time the subcontractor(s) is retained to perform such services.

(Continued on Next Page)

E-Verify Employment Eligibility Verification User I.D. Number

Date of Authorization to Use Federal Work Authorization Program

Name of Subcontractor

Title of Authorized Officer or Agent of Subcontractor

Signature and Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this the _____ day of _____, 2024.

NOTARY PUBLIC:

Name:

My Commission Expires:

(NOTARY SEAL)

As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

EEO REPRESENTATION

EQUAL EMPLOYMENT OPPORTUNITY (EEO) PRACTICE:

EEO Plan: The successful Bidder will develop and implement an EEO policy that, as a minimum, will recruit, hire, train, and promote, at all levels, without regard to race, color, religion, national origin, sex, or age, except where sex or age is a bona fide occupational qualification.

EEO For Veterans/Handicapped: The successful Bidder will also provide equal employment opportunities for qualified disabled veterans, handicapped persons and veterans of the Vietnam Era.

EEO For Successful Bidder Programs: The successful Bidder, will ensure equal employment opportunity applies to all terms and conditions of employment, personnel actions, and successful Bidder-sponsored programs. Every effort shall be made to ensure that employment decisions, programs and personnel actions are non-discriminatory. That these decisions are administered on the basis of an evaluation of an employee's eligibility, performance, ability, skill and experience.

EEO Acquisitions: The successful Bidder will develop and implement a policy that will give equal opportunity to the purchase of various goods and services from small businesses and minority-owned businesses.

a. Does the Bidder have the above EEO policy in place? ☐]

Yes

☐] No

b. If the answer to a. above is no, will the Bidder have such a policy in place for the project?

☐] Yes

☐] No

Statement of Assurance: The Bidder herein assures the JWSC that it is in compliance with Title VI & VII of the 1964 Civil Rights Act, as amended, in that it does not on the grounds of race, color, national origin, sex, age, disability, or veteran status, discriminate in any form or manner against employees or employers or applicants for employment and is in full compliance with A.D.A.

(Firm's Name)

(Authorized Signature)

(Title)

(Date)

CERTIFICATE OF DRUG FREE WORKPLACE

In order to have a drug- free workplace, a business shall:

Publish a statement notifying employees that the unlawful, manufacture, distribution, dispensing, possession, or use of controlled substances is prohibited in the workplace and specifying the actions that shall be taken against employees for violation of such prohibition.

Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

As a condition of working on the commodities or contractual services then under bid, the employee shall notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

Impose a sanction on, or require satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.

Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

Company Name:

Authorized Signature:

Title:

Date:

FORM OF CONTRACT

**Office of the Director
Brunswick-Glynn County Joint Water and Sewer Commission
1703 Gloucester Street
Brunswick, Georgia 31520
(912) 261-7127 Phone
(912) 261-7178 Fax
E-Mail: pcrosby@bgjwsc.org**

<i>PART A</i>	<i>Contract Form</i>
<i>PART B</i>	<i>Performance Bond Requirements</i>
<i>PART C</i>	<i>Payment Bond Requirements</i>
<i>PART D</i>	<i>Affidavit of Payment of Claims</i>
<i>PART E</i>	<i>Certificate of Insurance Example</i>
<i>PART F</i>	<i>Certificate of Drug Free Workplace</i>

AGREEMENT BETWEEN OWNER AND

CONTRACTOR FOR CONSTRUCTION CONTRACT

This Agreement is by and between Brunswick-Glynn County Joint Water and Sewer Commission ("Owner") and ("Contractor"). Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
furnishing all skill, labor, materials, tools, equipment and incidentals required to construct complete, in place, and ready to operate a new 750,000 Gallon Elevated Storage Tank.
- (a) Contractor agrees to provide all the skill, labor, materials and equipment necessary to carry out, in good faith, the complete requirements of the Project specified as **CONSTRUCTION SERVICES FOR NORTH MAINLAND EXIT 42 EST JWSC PROJECT NO. 2213**, in strict conformity with all sections of the Solicitation, whose program services together with the Contractor's Bid, the Invitation for Bids, Instructions to Bidders, General Conditions, Special Conditions, Construction Plans, Standards for Water and Sewer Design and Construction, Technical Specifications, this Agreement and all addenda hereto annexed, and the Contract Documents shall form essential parts of this Agreement as if fully contained herein.
 - (b) Contractor agrees to perform all Project services as contemplated herein in a manner that does not jeopardize the safety of Contractor's workers, JWSC personnel or any other person, including providing and maintaining all necessary precautions for the protection of the public. In addition, Contractor agrees to perform the Project contemplated herein in a manner that poses no threat to the environment or violates any federal, state or local statute, ordinance, rule or regulation regarding environmental concerns.
 - (c) Contractor agrees to keep the rights-of-way, easement areas and adjacent property free from accumulations of waste materials, rubbish and other debris resulting from the Work, and progressively as the Work is completed he shall remove all waste materials, rubbish and debris from and about the work areas and shall leave the site clean.

THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Construction Services for North Mainland Exit 42 EST, JWSC Project No. 2213, Brunswick, Glynn County, Georgia
- 2.02 *Definitions: Levels of Project Completion*
- A. *Substantial Completion* shall be defined as the date on which the Work was sufficiently completed, in accordance with the contract as modified by any change order or amendments agreed by the parties, so that the owner could occupy the project for the use for which it was intended, the sufficiency of which to be determined and certified by the Engineer. Minor items, not necessary for the primary use of the project, determined as such by the Engineer, may still be incomplete.
 - B. *Final Completion* shall be defined as the date on which the construction is complete, and all items of the Work have been satisfactorily completed and accepted in accordance with the contract, as determined and certified by the Engineer.

ENGINEER

3.01 The Owner will assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

- A. The Work will be substantially complete completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions based on the issue date of the Notice To Proceed.

4.03 *Contract Times: Days*

- A. The Work will reach Substantial Completion within 450 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 480 days after the date when the Contract Times commence to run.

4.04 *Milestones*

- A. ADD PROJECT MILESTONES IF APPLICABLE

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. The parties agree that the following liquidated damage amounts are reasonable estimates of anticipated or actual harm that might arise from Contractor's breach. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 1. *Substantial Completion:* Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion, and Final Completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this

Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
 - A. For all Work, at the prices stated in Contractor's Bid, INSERT AMOUNT , attached hereto as Exhibit A.

PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.
 - 1. Progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to retainage and liquidated damages, in accordance with the Contract and the General Conditions.
 - a. Except as otherwise provided herein following the completion of fifty percent (50%) of the Work, Owner shall pay Contractor ninety percent (90%) of the value of the Work completed as provided in the contract documents plus the value of materials and equipment suitably stored, insured, and protected at the construction site and, at the owner's discretion, such materials and equipment suitably stored, insured, and protected off site at a location approved by the owner's authorized contract representative, when allowed by the contract documents, with the remaining ten percent (10%) held as retainage; and
 - b. There shall be no amounts retained on progress payments submitted after 50 percent (50%) of the Work on the project has been completed if in the opinion of Owner or Engineer that such Work is satisfactory and has been

completed on schedule; and

- i. Discontinuation of retention shall not affect the retained amounts on the first fifty percent (50%) of the Work on the project which may continue to be held to ensure satisfactory completion of the project; and
 - ii. If, after discontinuing the retention, the Owner or Engineer determines that the work is unsatisfactory, or has fallen behind schedule, the Owner may resume retention at the previous rate of ten percent (10%).
- B. At Substantial Completion of the Work, and as the Engineer determines the work to be reasonably satisfactory, Owner shall within thirty (30) days after invoice and other appropriate documentation as may be required by the contract documents are provided pay the retainage to the Contractor. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent (200%) of the value of each item as determined by the Engineer shall be withheld until such item or items are completed.
- C. Final payment of the retained amounts to the Contractor under the contract to which the retained amounts relate shall be made after certification by the Engineer in charge of the project covered by the contract that the work has been satisfactorily completed and is accepted in accordance with the contract, plans, and specifications.
- D. Retainage shall be invested at the current market rate and any interest earned on the retained amount by Owner shall be paid to the Contractor when the project has been completed within the time limits specified and for the price specified in the contract, or in any amendments or change orders approved in accord with the terms of the contract, as certified pursuant to Subsection 1 of this paragraph; and
 1. Payment to the Contractor of interest earned on the retained amounts shall be made after certification by the Engineer in charge of the project covered by the contract that the work has been completed within the time specified and within the price specified in the contract
- E. The Contractor shall, within ten days from the contractor's receipt of retainage from the owner, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the contractors retainage is reduced by the owner; provided, however, that the value of each subcontractor's work complete and in place equals 50 percent of his or her subcontract value, including approved change orders and other additions to the subcontract value, provided, further, that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the contractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond; and
 1. The foregoing paragraph is intended to outline Contractor's responsibilities as set forth in

O.C.G.A. § 13-10-80, and is not, by itself, intended to confer contractual privity or third party beneficiary status upon any subcontractor or lower tier subcontractor.

6.02 Consent of Surety

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.03 Interest

- A. All amounts not paid when due will bear interest at the rate of one percent per annum.

CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the bid documents table of contents of the project manual (copy of list attached).
 - 6. Drawings listed on the attached sheet index.
 - 7. Addenda (if any)
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form dated in response to Invitation For Bid 24-011 Construction Services for Exit 42 Elevated Storage Tank, JWSC Project No. 2213
 - 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface

conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or

affect the execution of the Contract.

8.03 Standard General Conditions

Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **insert date 2024** (which is the Effective Date of the Contract).

Owner:

Brunswick-Glynn Count Joint Water and Sewer
Commission

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: G. Ben Turnipseed, Sr.

(typed or printed)

Title: Chairman

(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

(individual's signature)

Title: _____

(typed or printed)

Address for giving notices:

1703 Gloucester Street

Brunswick, GA 31520

Designated Representative:

Name: Andrew Burroughs

(typed or printed)

Title: Executive Director

(typed or printed)

Address:

1703 Gloucester Street

Brunswick, GA 31520

Email: aburroughs@bgjwsc.org

Contractor:

(typed or printed name of organization)

By: _____

(individual's signature)

Date: _____

(date signed)

Name: _____

(typed or printed)

Title: _____

(typed or printed)

Attest: _____

(individual's signature)

Title: _____

(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____

(typed or printed)

Title: _____

(typed or printed)

Address :

License No.: _____

(where applicable)

State: _____

Georgia

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

- c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
 - 22. *Engineer*—The individual or entity named as such in the Agreement.
 - 23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
 - 24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

- b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
- 25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 - 26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
 - 27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
 - 28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
 - 29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
 - 30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
 - 31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
 - 32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
 - 33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
 - 34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
 - 35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
 - 36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
 - 37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
 - 38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
 - 39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

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

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,”

“install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and

interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and

machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
 - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor

may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and

Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor,

and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
 - 1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities,

temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 “Or Equals”

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor’s Expense:* Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.
- C. *Engineer’s Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each “or-equal” request. Engineer may require Contractor to furnish additional data about the proposed “or-equal” item. Engineer will be the sole judge of acceptability. No “or-equal” item will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an “or-equal,” which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole

judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of

the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

- a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

- b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or
 - 9. Any correction of defective Work by Owner.

- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER’S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner’s Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the

design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the

maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
 - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
 - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request

that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
5. *Binding Decision:* Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete,

and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the

Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder’s risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor’s fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor’s officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor’s fee.
 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 3. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.
 4. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.
 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.
 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

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

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
 - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
 - 3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude

Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

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

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

15.01 *Progress Payments*

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

reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

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

E. Reductions in Payment by Owner

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part

of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might

in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.

- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday

or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SPECIAL CONDITIONS

1.0 EXISTING FACILITY OPERATIONS

The Contractor shall coordinate the work with the Owner so that the construction activities required do not interfere with or prevent the operation of the existing facilities. If at any time, any portion of the facility is out of service, the Contractor must obtain approval from the Owner as to the date, time and length of time that portion of the facility is out of service. Extended outages will require that the Contractor provide, at Contractor's expense, any necessary by-pass pumping or other arrangements as required.

Connections to the existing facilities or alteration of existing facilities will be made at times when the facility involved is not in use or at times established by the Owner when the use of the facility can be conveniently interrupted for the period of time needed to make the connection or alteration. Notify the Owner at least ten (10) days prior to relocating any facility piping or taking any existing facility component out of service.

2.1 PROJECT SCHEDULE

2.2 Project Schedule: The following activities shall be completed by the indicated date or days after Notice to Proceed.

Task or Milestone	Completion (Days after NTP)
Shop Drawing Submittals	
Completion and submission of all Shop Drawings by Contractor	14
Review of Shop Drawings By JWSC/Engineer	28
Re-submittal of Shop Drawings By Contractor (if Required)	35
Review of Re-submittal Shop Drawings By JWSC/Engineer (if Required)	42
Critical Submittals	
Project Schedule*	7
Schedule of Values*	7
Substantial Completion	450
Final Completion of All work (including all restoration)	480
* The construction progress schedule shall show the proposed dates of commencement and completion of the various milestones of the work required under the contract as well as the anticipated amounts of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The construction progress schedule will be a true reflection of the actual construction progress, shall be reviewed and updated for the bi-weekly project meetings and submitted with the monthly periodic payment request. The monthly payment shall not be considered complete without the accurately updated construction progress schedule.	

2.3 Work Hours

Unless otherwise noted in the Contract Documents, the time allotted for completion of the project is based on a standard work week with construction activities between 7:00 a.m. and 7:00 p.m., Monday through Friday. Contractor shall coordinate any necessary night or weekend construction activities a minimum of 24 hours in advance with the JWSC project representative and Glynn County. It is noted that jack-and-bore construction within CSX railroad may require continuous construction operations until complete.

2.4 Delays

Contractor shall not be compensated for delays caused by Contractor's inefficiency, rework made necessary by Contractor's error, failure to perform the Work as scheduled, or any other corrective or productivity measures made necessary by errors, omissions, or failures to properly perform the Work. Neither shall the Contractor be compensated for delays caused by events by Act of God as described in the General Conditions. Within thirty

(30) days after the onset of a delay, Contractor shall notify the JWSC in writing of the delay, which shall provide: (1) a detailed description of the delay and its probable duration, (2) the specified portion of the Work affected, and (3) an opinion as to the cause of the delay and liability (if any) for the delay. In the case of continuing delay for the same cause, only one notice of delay is necessary. Failure to provide this notice within thirty (30) days of the delay waives any claim for extension of time resulting from such delay. If the delay is due to the failure of another contractor on a separate but conflicting project to complete its work in a timely manner, changes ordered in the Work, an Act of God event, or any other cause which the JWSC, in its sole judgment and discretion, determines to justify the delay, then the Contract Completion Date may be extended as necessary to compensate for the delay. All time extensions shall be in the form of a written amendment signed by both parties.

3.1 SUBSTITUTIONS

This Section outlines the restrictions and requirements for substitutions, product and manufacturer options, and construction method options.

For the purposes of these Contract Documents, a "substitute item" shall be defined as one of the following:

A product or manufacturer offered as a replacement to a specified product or manufacturer.

A product or manufacturer offered in addition to a specified product or manufacturer.

A “substitute construction method” shall be defined as one of the following:

A mean, method, technique, sequence or procedure of construction offered as a replacement for a specified mean, method, technique, sequence or procedure of construction.

A mean, method, technique, sequence or procedure of construction offered in addition to a specified mean, method, technique, sequence or procedure of construction.

An item or construction method, which is offered where no specific product, manufacturer, mean, method, technique, sequence or procedure of construction is specified or shown on the drawings, shall not be considered a substitute and shall be at the option of the Contractor, subject to compliance with all provisions in the Contract Documents for that item or construction method.

For products specified only by a referenced standard, the Contractor may select any product by any manufacturer, which meets the requirements of the Specifications, unless otherwise indicated in the Contract Documents.

If the manufacturer is named on the drawings or in the Specifications as an acceptable manufacturer, products of that manufacturer meeting all requirements of the drawings and specifications are acceptable.

Whenever the Engineer’s design is based upon a specific product or process of a specific manufacturer, that manufacturer shall be so listed in the specifications or on the drawings, and such product or process shall be used in the base bid.

Any **Contractor** proposing to furnish products or processes other than those listed as base bid items shall make a written application for approval of the proposed substitution to the JWSC/Engineer at least 15 days prior to the date set for receipt of bids. The minimum information required in the application is listed below.

- A. Documentation demonstrating that the item being proposed as a substitute will fit in the space allowed, perform the same functions and have the same capabilities as the product or process specified.
- B. A letter signed by an officer of the company certifying compliance with the specifications without exception.**
- C. Installation list with contacts and phone numbers for the same minimum number of installations and years of experience as the specified product or process.
- D. Complete descriptive and technical data addressing all specification requirements.
- E. Complete list of deviations from the specifications as written.
- F. Identification of accessory items required as a result of the proposed substitution.

G. Identification of all architectural, structural, mechanical, piping, electrical or other modifications required as a result of the proposed substitution.

Whenever a product specification includes minimum experience requirements which the proposed substitution cannot meet, a condition of approval will require that the manufacturer furnish the Owner with a cash deposit or bond acceptable to the Owner in an amount equal to the cost of the product or process which shall remain in effect until the experience requirement has been met.

The burden of proving equivalency of a proposed substitute to an item designated by trade name or manufacturer's name referenced on the drawings or in the specifications rests on the party submitting the request for approval. The JWSC/Engineer will give consideration to reports from reputable independent testing laboratories, verified experience records showing the reputation of the proposed product with previous users or any other written information that is reasonable under the circumstances. The degree of proof required for approval of a proposed substitute as equivalent to a named product is the amount of proof necessary to convince the JWSC/Engineer beyond all doubt. To be acceptable, a proposed substitute must meet or exceed all requirements of the drawings and specifications.

If the proposed substitution is approved, an addendum will be issued to all prospective bidders at least five days prior to the date set for the opening of bids listing any and all approved substitutions. If approved, the bidder may offer a price for the substitution in the bid form for the Owner's consideration. The bid offered shall include the cost of all additional architectural, structural, mechanical, piping, electrical or other modifications, including engineering and design costs, required as a result of the proposed substitution. The JWSC/Engineer shall be the final judge on questions of equivalence.

4.1 SUBMITTALS

The work under this Section includes submittal to the JWSC/Engineer of shop drawings, product data and samples required by the various sections of these specifications. The submittal contents required are specified under each Section.

4.2 Definitions

Shop Drawings: Shop drawings include technical data, drawings, diagrams, procedures and methodology, performance curves, schedules, templates, patterns, test reports, calculations, instructions, measurements and similar information as applicable to the specific item for which the shop drawing is prepared.

Product Data: Product data includes standard printed information on materials, products and systems, not specifically prepared for this project other than the designation of selections from among available choices printed therein.

Samples: Samples include both fabricated and un-fabricated physical

examples of materials, products and units of work, both as complete units and smaller portions of units of work, either for limited visual inspection or more detailed testing and analysis.

4.3 Routing of Submittals

Submittals and routine correspondence shall be routed as follows:

- Supplier to Contractor
- Contractor to JWSC
- JWSC to Engineer
- Engineer to JWSC
- JWSC to Contractor
- Contractor to Supplier

4.4 Submittal Log

The Contractor shall submit to the Engineer a complete list of preliminary items for which shop drawings are to be submitted. Included in this list shall be the names of all proposed manufacturers furnishing specified items. Review of this list by the Engineer shall in no way expressed or implied relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Specifications. This procedure is required in order to expedite final review of Shop Drawings.

The Engineer will review the submitted preliminary shop drawing list and information and will develop a submittal log required for the project. The Contractor is to maintain an accurate updated submittal log and will bring this log to each scheduled progress meeting with the JWSC and the Engineer. This log should include the following items:

1. Submittal-Description and Number assigned.
2. Date to JWSC.
3. Date returned to Contractor (from JWSC).
4. Approval Status of Submittal.
5. Date of Resubmittal and Return (as applicable).
6. Date material release (for fabrication).
7. Projected date of fabrication.
8. Projected date of delivery to site.
9. Status of O&M manuals submittal.
10. Related Specification Section.
11. Related Drawings Sheet Number.

4.5 Contractor's Responsibilities

The Contractor shall be responsible for the accuracy and completeness of the information contained in each submittal and shall ensure that the material

or equipment shall be as described in the submittal. The Contractor shall verify in writing that all features of all products conform to the requirements of the drawings and specifications. **If the Contractor takes exception to the specifications, the Contractor shall note the exception in the letter of transmittal to the Engineer and the shop drawings shall clearly indicate any deviations in the submittal from the requirements of the Contract Documents.** Submittal documents shall be clearly edited to indicate only those items which are being submitted for review. All extraneous material shall be crossed out or otherwise obliterated. The Contractor shall ensure that there is no conflict with other submittals and shall notify the JWSC/Engineer in each case where his submittal may affect the work of another contractor or the Owner. The Contractor shall ensure coordination of submittals among the related crafts and subcontractors.

The transmittal letter which accompanies all submittals must include the following information:

1. Date.
2. Project Title and Number.
3. Contractor's name, address, phone and fax numbers.
4. The number of each Shop Drawing, Project Data, and Sample submitted.
5. Notification of Deviations from Contract Documents.
6. Submittal Log Number.

Before each submittal, the Contractor shall have determined and verified all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto; all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the work; and all information relative to the Contractor's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

Submittal documents common to more than one piece of equipment shall be identified with the appropriate equipment numbers and specification section and paragraph. Each submittal shall bear a stamp or written indication that the Contractor's obligations under the contract with respect to the Contractor's review and approval of that submittal have been met. Any deviations from the requirements of the drawings and specifications shall be noted on the submittals.

The Contractor shall submit six (6) copies of all specified information and/or submittals may be made electronically in PDF format. **Submittals which do not have all the information required to be submitted including notification of deviations and the Contractor's stamp or written indication of review, are not acceptable and will be returned without**

review.

The Contractor shall be responsible for and bear all costs of damages which may result from the ordering of any material or from proceeding with any part of work prior to the completion of the review by JWSC of the necessary Shop Drawings.

The Contractor shall be fully responsible for observing the need for and making any changes in the arrangement of piping, connections, wiring, manner of installation, etc., which may be required by the materials/equipment he proposed to supply both as pertains to his own work and any work affected under other parts, headings, or divisions of Drawings and Specifications.

4.6 Review Procedures

The JWSC/Engineer's review will not extend to means, methods, techniques, sequences or procedures of construction, or to verifying quantities, dimensions, weights, or fabrication processes, or to safety precautions or programs incident thereto. Unless otherwise specified, within fourteen days after receipt of a submittal, the JWSC/Engineer will review the submittal and return three (3) copies or an electronic PDF format of the review to the Contractor with comments. The returned submittals will indicate one of the following actions:

- If the review indicates conformance with the drawings and specifications, submittal copies will be marked **"NO EXCEPTIONS TAKEN."** In this event, the Contractor may begin to implement the work or incorporate the material or equipment covered by this submittal.
- If the review indicates limited corrections are required, submittal copies will be marked **"MAKE CORRECTIONS NOTED."** The Contractor may begin implementing the work or incorporate the materials or equipment covered by the submittal in accordance with the noted corrections. Where submittal information will be incorporated into Operation and Maintenance data, a corrected copy shall be provided.
- If the review indicates that the submittal is insufficient or contains incorrect data, submittal copies will be marked **"AMEND AND RESUBMIT."** Except at his own risk, the Contractor shall not undertake work covered by this submittal until it has been revised, resubmitted, and returned marked either **"NO EXCEPTION TAKEN"** or **"MAKE CORRECTIONS NOTED."**
- If the review indicates that the submittal does not comply with the drawings and specifications, submittal copies will be marked **"REJECTED - SEE REMARKS."** Submittals with deviations that have not been clearly identified will be rejected. Except at his own

risk, the Contractor shall not undertake work covered by this submittal until it has been revised, resubmitted, and returned marked either “NO EXCEPTIONS TAKEN” or “MAKE CORRECTIONS NOTED.”

Review of drawings, submittals, or information regarding materials or equipment the Contractor proposes to provide, shall not relieve the Contractor of his responsibility for errors and omissions therein and shall not be regarded as an assumption of risks or liability by JWSC or Engineer or by any officer or employee thereof, and the Contractor shall have no claim under the contract on account of the failure or partial failure, or the method of work, material, or equipment so reviewed. A mark of “NO EXCEPTION TAKEN” or “MAKE CORRECTIONS NOTED” shall mean that the JWSC/Engineer has no objection to the Contractor, upon his own responsibility, using or providing the materials or equipment proposed.

5.0 INTERPRETATION OF PLANS AND SPECIFICATIONS

All questions regarding the meaning or intent of the plans, specifications and contract documents shall be directed in writing to the JWSC’s Contract Project Representative identified in Paragraph 2.0 of the General Conditions. Reference may be made throughout the Contract Documents to the Standards for Water and Sewer Design and Construction of the Brunswick – Glynn Joint Water and Sewer Commission. In the event of a conflict between the aforementioned Standards and the project plans and specifications prepared by Four Waters Engineering, Inc. (4Waters), the 4Waters plans and specifications shall take precedence.

6.1 FIELD ENGINEERING

Field engineering shall include all surveying work required to layout the proposed facilities and control the location of the finished project. The Contractor shall be solely responsible for constructing the project to the correct horizontal and vertical alignment as shown on the drawings and as specified herein. The Contractor shall assume all costs associated with rectifying any work constructed in the wrong location.

The drawings provide the location and/or coordinates of principal components of the project.

6.2 Owner’s Responsibilities

The Owner will provide the following:

- At least one (1) vertical control point on the project site with its elevation
- A topographic survey (included on the drawings)

The Owner may, acting through the Engineer, order changes to the location

of some of the components of the project or provide clarification to questions regarding the correct alignment.

6.3 Contractor's Responsibilities

The Contractor's responsibilities include but are not limited to the following:

- Be responsible for setting reference points and/or offsets, establishment of baselines, and all other layout, staking and other surveying required for the construction of the project.
- Safeguard all reference points, stakes, grade marks, horizontal and vertical control points, and bear the cost of re-establishing same if disturbed.
- Stake out temporary and permanent easements or the limits of construction to ensure that the work is not deviating from the indicated limits.
- Record drawing surveys shall be performed in accordance with Paragraph 7.0 of these Special Conditions.

Baselines shall be defined as the line to which the location of the work is referenced, i.e. edge of pavement, road centerline, property line, right of way or survey line.

7.1 RECORD DOCUMENTS

The work under this Section includes but is not limited to the compiling, maintaining, recording and submitting of project record documents as herein specified.

Record documents include but are not limited to the following:

- Drawings
- Specifications
- Change orders and other modifications to the Contract
- Engineer field orders or written instructions, including requests for information (RFI) and clarification memos
- Reviewed shop drawings, product data and samples
- Test records

The Contractor shall maintain on-site an up to date set of As-Built Drawings.

7.2 Record Drawings

The Contractor is solely responsible for proper and correct documentation of all work, and for meeting the following As-Built requirements. The Contractor shall plan ahead and have their surveyor on-site to record information and

data during construction. As-Built Drawings maintained by the Contractor shall provide dimensions, distances and coordinates to the nearest 0.1 foot. Elevations shall be provided to the nearest 0.01 foot.

Contractor shall provide Final As-Built drawings to the Engineer of Record in AutoCAD format, in Georgia State Plane East Zone Coordinates (Horizontal Datum NAD 83 and Vertical Datum NAVD88), conducted by a surveyor licensed in the State of Georgia of all installed components of the project from a post construction field run survey. As-Built data provided to the Engineer of Record for incorporation into the Record Drawings shall include Horizontal Directional Drill pipe installation information in plan and profile views in AutoCAD format with X, Y, and Z coordinates in Georgia State Plane East Zone Coordinates (Horizontal Datum NAD 83 and Vertical Datum NAVD88) conducted by a surveyor licensed in the State of Georgia. Directional Drill Bore Log shall be provided as part of the As-Built documentation and shall be in Georgia State Plane East Zone Coordinates (Horizontal Datum NAD 83 and Vertical Datum NAVD88) and be relative to the established surface survey benchmark and baseline stationing that is tied to existing, fixed and visible sight features. Directional Drill Bore Log shall show recorded X, Y, and Z locations of the drill head at minimum every 20 feet in the AutoCAD format documentation.

The Contractor shall pay all surveying and preparation costs associated with the Final As-Built Drawings. The Final As-Built Drawings shall provide elevations to the nearest 0.01 foot for all manhole inverts, manholes frames and all other pertinent items constructed by the Contractor. The Final As-Built Drawings shall provide dimensions, distances and coordinates to the nearest 0.1 foot and angles to the nearest 10 seconds.

Final As-Built Drawings shall be labeled “FINAL AS-BUILT DRAWINGS” and shall include the name of the licensed surveyor who prepared the drawings, the date the survey was conducted, certification statement with the horizontal and vertical datum used, and surveyor’s seal.

Final As-Built Drawings shall include the following:

- Horizontal and vertical location of all exposed and underground piping systems, valves, appurtenances, fittings, taps; etc., and all deviations from the design plans. Provide size, material, top of pipe elevations, invert elevations, slope percentages, length and type of all pipes, vertical clearances at each utility crossing.
- Location and dimensions of roadways and parking areas;
- Location of structures including finish floor elevations, tank depths, top and bottom elevations;
- Horizontal angle and distance between manholes;

- If profiles or cross-sections are part of the design plans, then As-Built data shall be shown on each profile or cross-section on the As-Built drawings.

The Engineer of Record shall review and utilize the Final As-Built information provided by the Contractor for the preparation of the Final Record Drawings. Contractor shall provide written certification of the accuracy and completeness of the Final As-Built information provided to the Engineer of Record.

7.3 Specifications

Legibly mark each section to record the manufacturer, trade name, catalog number and supplier of each product and item of equipment actually furnished. Also record all changes made by Requests for Information (RFI), field order, clarification memorandums of Contract change order.

7.4 Submittal

At the completion of the project, deliver Record Documents to the JWSC/Engineer. Include a signed transmittal letter which lists the title and number of each record document. Final As-Built Drawings shall be provided as noted in Section 7.1.

8.0 WARRANTY

Contractor shall warrant that the Work, workmanship and material furnished by Contractor shall be new and of specified quality, shall conform to the requirements of the Contract Documents, shall be free from defects, and shall be free from any security interest, lien, or other encumbrances. This warranty shall remain in effect for a period of twelve (12) months after FINAL ACCEPTANCE OF THE WORK, unless otherwise specified in the Contract Documents. Any defective Work, workmanship, or material corrected during the warranty period shall be similarly warranted for twelve (12) months following its correction or for such other period as specified herein. The express warranty set forth herein shall not be exclusive and shall not act as a limitation upon any statutory or other warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

In the event of breach of this warranty, Contractor shall take the necessary actions to correct the breach in the most expedient manner as dictated by then-existing circumstances. All costs incidental to the repair, replacement, redesign, and testing incurred as a result thereof, including the removal, replacement, and reinstallation of equipment in place when the Work was started, shall be Contractor's responsibility. Upon written notification of a breach, Contractor shall promptly send the necessary personnel to the project site to assume responsibility for corrective action. Time is of the essence. Contractor shall be afforded necessary and reasonable access to

perform warranty work. If Contractor fails to promptly correct the breach, the JWSC may take corrective action without waiving any other rights or remedies it may have, and Contractor shall reimburse the JWSC for all expenses reasonably incurred in performing such corrective action.

9.0 SEWAGE SPILLS

9.1 Contractor Requirements

During the contract period the Contractor shall be responsible for repair of any damaged sewer system infrastructure and for any sewer system overflows or spills which result from the Contractor's activities. The Contractor shall be responsible for, at no cost to the Brunswick-Glynn JWSC, the cleanup, notification, advertisement, monitoring, sampling and analysis, reporting, and other requirements as noted in the following section 9.2, of any sewer system overflows or spills which result from the Contractor's activities.

9.2 Georgia EPD Requirements for Sewage Spills

- A. It shall be the duty of the person in charge of such substances at the time to forthwith notify EPD in person or by telephone of the location and nature of the danger, and it shall be such person's further duty to immediately take all reasonable and necessary steps to prevent injury to property and downstream users of said water.

1. Spills and Major Spills:

- a. A "spill" is any discharge of raw sewage by a Publicly Owned Treatment Works (POTW) to the waters of the State.
- b. A "major spill" means:
 - 1) The discharge of pollutants into waters of the State by a POTW that exceeds the weekly average permitted effluent limit for biochemical oxygen demand (5-day) or total suspended solids by 50 percent or greater in one day, provided that the effluent discharge concentration is equal to, or greater than 25 mg/L for biochemical oxygen demand or total suspended solids.
 - 2) Any discharge of raw sewage that 1) exceeds 10,000 gallons or 2) results in water quality violations in the waters of the State.

- c. "Consistently exceeding effluent limitation" means a POTW exceeding the 30-day average limit for biochemical oxygen demand or total suspended solids for at least five days out of each seven day period during a total period of 180 consecutive days.
- 2. The following specific requirements shall apply to POTW's. If a spill or major spill occurs, the owner of a POTW shall immediately:
 - a. Notify EPD, in person or by telephone, when a spill or major spill occurs in the system.
 - b. Report the incident to the local health department(s) for the area affected by the incident. The report at a minimum shall include the following:
 - 1) Date of the spill or major spill;
 - 2) Location and cause of the spill or major spill;
 - 3) Estimated volume discharged and name of receiving waters; and
 - 4) Corrective action taken to mitigate or reduce the adverse effects of the spill or major spill.
 - c. Post a notice as close as possible to where the spill or major spill occurred and where the spill entered State waters and also post additional notices along portions of the waterway affected by the incident (i.e. bridge crossings, boat ramps, recreational areas, and other points of public access to the affected waterway). The notice at a minimum shall include the same information required in 8.2 A. 2. b. (1-4) above. These notices shall remain in place for a minimum of seven days after the spill or major spill has ceased.
 - d. Within 24 hours of becoming aware of a spill or major spill, the owner of a POTW shall report the incident to the local media (television, radio, and print media). The report shall include the same information required in 8.2 A. 2. b (1-4) above.
 - e. Within five (5) days (of the date of the spill or major spill), the owner of a POTW shall submit to EPD a written report which includes the same information required in 8.2 A. 2. b (1 -4) above.

- f. Within 7 days (after the date of a major spill), the owner of a POTW responsible for the major spill, shall publish a notice in the largest legal organ of the County where the incident occurred. The notice shall include the same information required in 8.2 A. 2. b (1-4) above.
- g. The owner of a POTW shall immediately establish a monitoring program of the receiving waters affected by a major spill or by consistently exceeding an effluent limit, with such monitoring being at the expense of the POTW for at least one year. The monitoring program shall include an upstream sampling point as well as sufficient downstream locations to accurately characterize the impact of the major spill or the consistent exceedance of effluent limitations described in the definition of "Consistently exceeding effluent limitation" above. As a minimum, the following parameters shall be monitored in the receiving stream:
 - 1) Dissolved Oxygen;
 - 2) Fecal Coliform Bacteria;
 - 3) pH;
 - 4) Temperature; and
 - 5) Other parameters required by the EPD.
- h. The monitoring and reporting frequency as well as the need to monitor additional parameters, will be determined by EPD. The results of the monitoring will be provided by the POTW owner to EPD and all downstream public agencies using the affected waters as a source of a public water supply. Within 24 hours of becoming aware of a major spill, the owner of a POTW shall provide notice of a major spill to every county, municipality, or other public agency whose public water supply is within a distance of 20 miles downstream and to any others which could be potentially affected by the major spill.

PART B - PERFORMANCE BOND

State of Georgia City
of Brunswick County
of Glynn

KNOW ALL MEN BY THESE PRESENT, that we _____

_____, as Principal, and _____

_____, as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the Brunswick-Glynn Joint Water and Sewer Commission (JWSC), for the use and benefit of those entitled thereto in the not to exceed sum of _

_____ \$ (_____)

for the payment of which will and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the JWSC has engaged the said Contractor for the not to exceed sum of _____ \$ (_____)

for the **NORTH MAINLAND EXIT 42 EST, BGJWSC PROJECT NO. 2213**, as more fully appears in a written Agreement bearing the same project title, a copy of which Agreement is by reference hereby made a part thereof.

NOW, THEREFORE, if a said Contractor shall fully and faithfully perform all the undertakings and obligations under the said agreement or contract herein before referred to and shall fully indemnify and save harmless the JWSC from all costs and damage whatsoever which it may suffer by reason of any failure on the part of said Contractor to do so, and shall fully reimburse and repay the JWSC such default, and shall guarantee all products and workmanship against defects for a period of one year, then this obligation or bond shall be null and void, otherwise, it shall remain in full force and effect.

And for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the said Agreement or Contract or in the work to be performed there under, or the Specifications accompanying the same shall in any way affect the obligations under this obligation or bond, and notice is hereby waived of any such damage, extension of time, alteration or addition to the terms of the Agreement or Contract or to the work or to the Specifications.

This bond is given pursuant to and in accordance with the provisions of O.C.G.A. § 36-91-1 *et seq.* and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereinafter enacted, and these are hereby made a part hereof to the

same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Principal has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on

This the _____ day of _____, 20240, executed in two (2) counterparts.

PRINCIPAL: _____

By: _____

Title: _____

(SEAL)

Signed and Sealed in the Presence of: 1.

2. _____

SURETY: _____

By: _____

Title: _____

(SEAL)

Signed and Sealed in the Presence of: 1.

2. _____

PART C - PAYMENT BOND

State of Georgia City
of Brunswick County
of Glynn

KNOW ALL MEN BY THESE PRESENT, that we _____

_____, as Principal, and _____

_____, as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the Brunswick-Glynn Joint Water and Sewer Commission (JWSC), for the use and benefit of those entitled thereto in the not to exceed the sum of _____

_____ \$ (_____)

for the payment of which will and truly to be made, in lawful money of the United States, we do hereby bind ourselves, successors, assigns, heirs, and personal representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the JWSC has engaged the said Contractor for the not to exceed sum of _____ \$ (_____)

For the **NORTH MAINLAND EXIT 42 EST – GLYNN COUNTY, GEORGIA, BGJWSC PROJECT NO. 2213**, as more fully appears in a written Agreement bearing the same project title, a copy of which Agreement is by reference hereby made a part thereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor and all subcontractors to whom any portion of the work provided for in said Contract is sublet and all assignees of said Contract and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, products, services, or supplies for or in the prosecution of the work provided for in such Contract, or in any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees, incurred by the claimants in suits on this bond, then the above obligation shall be void; otherwise, it shall remain in full force and effect.

HOWEVER, this bond is subject to the following conditions and limitations:

- (a) Any person, firm or corporation that has furnished labor, products, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right of action against the Contractor and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the county in which the work provided for in said Contract to be performed or in any county in which Contractor or Surety does business. Such right of action shall be asserted in proceedings instituted in the name of the claimant or claimants for his or their

use and benefit against said Contractor and Surety or either of them (but not later than one year after the final settlement of said Contract) in which action such claim or claims shall be adjudicated and judgment rendered thereon.

- (b) The Principal and Surety hereby designate and appoint _____ as agent of each of them to receive and accept service of process or other pleading issue or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Contractor and/or Surety.
- (c) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said Contract.
- (d) This bond is given pursuant to and in accordance with the provisions of O.C.G.A. § 36-91-1 *et seq.* and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

[Signatures on Next Page]

IN WITNESS WHEREOF, the said Principal has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on

This the _____ day of _____, 2024, executed in two (2) counterparts.

PRINCIPAL: _____

By: _____

Title: _____

(SEAL)

Signed and Sealed in the Presence of:

1. _____

2. _____

SURETY: _____

By: _____

Title: _____

(SEAL)

Signed and Sealed in the Presence of:

1. _____

2. _____

PART D - AFFIDAVIT OF PAYMENT OF CLAIMS
(Submitted with Final Invoice)

_____ this the _____ day of _____, 2024,
appeared before me, _____, a Notary Public, in
and for

_____, and being by me first duly sworn states that all
subcontractors and suppliers of labor and materials have been paid all sums due them to date for
work performed or material furnished in the performance of the Contract between:

Brunswick-Glynn Joint Water and Sewer Commission (JWSC) and ***To Be Named*** (Contractor), last
signed _____ for the **NORTH MAINLAND EXIT 42 EST
PROJECT – GLYNN COUNTY, GEORGIA, BGJWSC PROJECT NO. 2213**

CONTRACTOR

Company: _____

By: _____

Title: _____

(SEAL)

Sworn to and subscribed before me this the _____ day of _____, 2024.

NOTARY PUBLIC:

Name: _____

My Commission Expires: _____

(NOTARY SEAL)

PART E - CERTIFICATE OF INSURANCE

This is to certify that _____
(Insurance Company)

of _____
(Insurance Company Address)

has issued policies of insurance, as identified by a policy number to the insured name below, and that such policies are in full force and effect at this time. Furthermore, this is to certify that these policies meet the requirements described in the General Conditions of this project; and it's agreed that none of these policies will be canceled or changed so as to affect this Certificate until thirty (30) days after written notice of such cancellation or change has been delivered to:

BRUNSWICK-GLYNN JOINT WATER AND SEWER COMMISSION, EXECUTIVE DIRECTOR, 1703 GLOUCESTER STREET, BRUNSWICK, GEORGIA 31520

It is further agreed that Brunswick-Glynn County Joint Water and Sewer Commission shall be named as an additional insured on the Contractor's policy.

1. **Insured:** _____

2. **Project Name:** **NORTH MAINLAND EXIT 42 EST – GLYNN COUNTY, GEORGIA, JWSC PROJECT NO. 2213**

3. **Policy Number(s):** _____

Date: _____
(Insurance Company)

Issued At: _____
(Authorized Representative)

Address: _____

Note: Please attach Certificate of Insurance form to this page.

