

Request for Proposal

Henry County Water Authority

East Lake Booster Pump Station (BPS) Relocation

Construction Manager at Risk



**Henry County Water Authority
McDonough, GA**

February 2026

Request for Proposal
East Lake BPS Relocation
Henry County Water Authority

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Invitation to Proposers

East Lake BPS Relocation Construction Manager at Risk

Henry County Water Authority McDonough, Georgia

Competitive sealed Proposals related to the construction of the HCWA East Lake Booster Pump Station (BPS) Relocation will be received online only until 2:00 p.m., local time, on March 20, 2026 via Bid Net Direct.

An optional site visit will occur at the East Lake Booster Pump Station, on March 3, 2026 at 10:00 am at the East Lake Booster Pump Station at 1013 East Lake Rd, McDonough, GA 30252

The Proposal shall contain all information as required in the Request for Proposal. An electronic copy of the Request for Proposal may be obtained from Bid Net Direct at the following link; <https://www.bidnetdirect.com/georgia/henrycountywaterauthority> portal. Neither Owner nor Engineer will be responsible for full or partial bidding documents including Addenda, if any, obtained from sources other than Bid Net Direct. Based on the information contained in the Proposals and potential interviews, the Owner will select a Proposal that is most advantageous to the Owner.

The Project consists of the following major elements: pre-construction consultation and construction of a replacement of the existing East Lake BPS with a new BPS on the existing site, as well as approximately 5,000 linear feet (LF) of new water main outside of the existing BPS property (suction and discharge piping) to improve the system hydraulics. The new BPS is anticipated to have the following features:

- Horizontal split case pumps inside new BPS building
- Site piping designed to maintain the existing operations of the onsite ground storage tanks
- Standby power generator with automatic transfer switch
- The existing BPS interior will be demolished, and the building will be left for storage if possible
- The new building will have a roll up door and crane system for pump removal/access, climate controlled electrical room with new switchgear and VFDs.

The Owner will in no way be liable for any costs incurred by any Proposer in the preparation of its Proposal in response to this Request for Proposal.

The successful Proposer will not be required to provide Performance and Payment Bonds for Pre-Construction Services Contract. Performance Bond and Payment Bond each in the amount of 100 percent of the Guaranteed Maximum Price (GMP) Contract amount at the time of GMP Contract Agreement for Construction execution.

The Owner reserves the right to reject all Proposals, to waive irregularities and informalities. Any Proposer that contacts any of the Owner's elected officials or staff, or the Owner's consultants, Barge Design Solutions, Inc. (except as allowed under Article 2.03 of the Request for Proposal) directly or indirectly after the date of issue of this invitation for the purpose of influencing the selection process prior to award shall be immediately disqualified and removed from consideration.

Henry County Water Authority
Mr. Tony Carnell, General Manager

Date of Issue: February 20, 2026

East Lake BPS Relocation

Henry County Water Authority McDonough, Georgia

Section 1 Introduction/Overview

1.01 Purpose / Objective/ Background

The Henry County Water Authority (Owner) is soliciting Proposals from qualified contractors to provide the Work associated with the pre-construction services of the East Lake BPS Relocation as well as opportunity to provide a Guaranteed Maximum Price (GMP) proposal for construction associated with this project at a later date. The Owner's consultant for this project is Barge Design Solutions, Inc. (Barge).

Selection of Contractor or subcontractor to perform the work shall be made in the best interest of Henry County Water Authority. Contractors are not precluded from competing to self-perform the work.

Section 2 Proposal Instructions and Requirements

2.01 Submission of Proposals

All Proposals are to be delivered as stated in the Invitation to Proposers.

The Owner will not accept any Proposals received after the designated time. Proposer shall submit the Proposal to the Bid Net Direct portal.

The cover of the Proposal must be plainly marked with the following information:

- Proposal for East Lake Booster Pump Station (BPS) Relocation.
- Proposer's correct name and address.

2.02 Compliance with the Request for Proposal

Proposals must be in strict compliance with this Request for Proposal (RFP). Failure to comply with all provisions of the RFP may result in disqualification.

2.03 Inquiries and Addenda

Any explanation desired by a Proposer regarding the meaning or interpretation of this RFP shall be requested in writing. Submit questions related to this RFP to the <https://www.bidnetdirect.com/georgia/henrycountywaterauthority> portal. Proposers are advised that responses to questions will only be official and binding where issued in a formal written addendum. Inquiries may not be responded to which are submitted within seven calendar days of the proposal due date.

2.04 Ambiguity, Conflict, or Other Errors in the Proposal

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP or any document attached to, incorporated into or referenced by the RFP, they shall immediately notify HCWA of such error in writing and request modification or clarification of the document as outlined in Paragraph 2.03 above.

Modifications by issuance of a written addendum. All parties who have received this RFP from Barge will receive addenda.

Failure of Proposer to receive or acknowledge any addendum shall not relieve it of any obligation under this RFP. All addenda shall become part of this RFP.

2.05 Proposal and Presentation Costs

The Owner will not be liable in any way for any costs incurred by any Proposer in the preparation of its Proposal in response to this RFP, nor for the presentation of its Proposal and/or participation in any discussions or negotiations.

2.06 Rejection/Acceptance of Proposal

The Owner reserves the right to reject any or all Proposals submitted. Reasons for which Proposers may be disqualified and their Proposals not considered include, but are not limited to:

- The Owner determines that the Proposer's Proposal is not responsive to the RFP.
- The Owner determines that the Proposer is not responsible. This may be due to the failure of the Proposer to promptly supply information in connection with an evaluation of responsibility.
- The Proposer fails to complete the Proposal in its entirety.
- An individual, firm, partnership, or corporation under the same or different names files more than one Proposal.
- Reasonable grounds exist for believing that any Proposer has a proprietary or pecuniary interest in more than one Proposal, or that collusion exists among the Proposers.
- Failure of the Proposer to satisfy any requirement of the RFP.

The Owner may accept proposals that are submitted properly and are not rejected for any reason. However, the Owner reserves the right to request clarifications or corrections to proposals.

All proposals shall be valid for a period of 90 days from date due.

2.07 Examination of Request for Proposal and Site

It is the responsibility of each Proposer before submitting a Proposal:

- To examine thoroughly the RFP and other related data identified in the RFP Documents.
- An optional site visit will occur on March 3, 2026 at 10:00 am at the East Lake Booster Pump Station at 1013 East Lake Rd, McDonough, GA 30252. Site entrance located off of Rowan Dr.

2.08 Proposer Responsibilities

The Proposer will be required to follow contract requirements, provide a responsible on-site superintendent, assign qualified persons to the work, provide the equipment required to do the assigned task or accomplish the work, retain and manage qualified subcontractors as needed, maintain records of Project progress, submit required reports on schedule, and maintain a clear line of communication for prompt resolution of problems.

2.09 Owner's Right to Research Proposer's Experience

Prior to or after receipt of the Proposal, Proposer agrees that Owner shall have the right to research work performed by the Proposer. This research effort will be conducted by Owner's personnel and their representatives as deemed appropriate by the Owner, which may include site visits and interviews with anyone involved with such projects.

The Owner reserves the right to contact any and all references (including those project references not furnished by the Proposer in their Proposal) to obtain, without limitation, for the purpose of evaluating the Proposer's experience and qualifications, the following minimum information regardless of Proposer's performance on the listed jobs:

- Was Proposer an asset to the team during the design process?
- Did the Proposer approach Pre-Construction Services with a mindset of collaboration?
- Did Proposer make available the proper level of expertise and experience in the performance of Pre-Construction Services?
- Did the Proposer develop strategies to meet the Owner's goals (e.g., schedule, budget, etc.) and to resolve issues with the Owner's goals in mind?
- Was Proposer cooperative during the submittal process (e.g., schedule, shop drawings, etc.)?
- Was the owner satisfied with daily operations on the project?
- Did Proposer effectively address problems that arose during the project?
- Did Proposer minimize the effect of its activities on nearby operations and activities?
- Did the owner consider the number and validity of Proposer generated change orders and Requests for Information, if any, appropriate?
- Did Proposer manage its subcontractors well?
- Did Proposer timely address warranty and punch-list items?
- Were Proposer's project superintendent and other key personnel competent and professional?
- Was the owner satisfied with the finished product?
- Would the owner look forward to hiring Proposer for another construction project?
- Did the subcontractors selected by the Proposer perform well on the project?

2.10 Acknowledgement of Contract Conditions

By submitting its proposal to the Owner, the Proposer acknowledges that it has read and understands the Contract, General Conditions and other provisions for the Project as included in Appendix E and have noted any concerns or suggested changes under Tab VII.

Section 3 Proposal Evaluation and Contractor Selection

3.01 Method of Contractor Selection

The Owner is using the Competitive Sealed Proposals method of contractor selection.

A panel appointed by the Owner will evaluate the Proposals. The criteria to be used by the panel in this evaluation are listed in Paragraph 3.02.

Once the evaluation is complete, the panel will rank all responsive Proposers based on the evaluation criteria stated herein.

3.02 Proposal Evaluation Criteria

The Owner will base its evaluation of Proposals and Proposers on the criteria listed in the table below. The evaluation criteria listed below is listed in the order of importance to the Owner.

Evaluation Criteria
Corporate Pre-Construction Services experience and performance in similar alternative construction delivery methods (construction management at risk and progressive design-build)
Corporate Construction Experience in related construction work, whether traditional or alternative delivery, including self-performance capabilities, financial qualifications, corporate history of litigation, the forms of dispute, and history of completing projects on time
Proposed Project Team's experience (pre-construction and construction) and performance in collaboration on similar alternative construction delivery methods
Proposer's Proposed Fees (Pre-Construction Services, Construction Services Fee and Core Project Management Team Costs)
Proposer's responsiveness to Request for Proposal, Georgia Utility Contractor's License, and Georgia Utility Manager's License

3.03 Interview

After submittal of the Proposals, and an initial review and initial ranking, but before a final ranking of Proposers, the Owner may decide to create a shortlist of Proposers and conduct individual interviews with a selected number of the highest ranked firms. The location of the interviews will be determined at a later date. The interview schedule will generally be in accordance with the Projected Timetable.

3.04 Anticipated Selection and Contracting Sequence

The Owner's review panel made up of Owner's and Owner's Consultants' staff will make a recommendation to select the top-ranked firm and authorize acceptance of the proposal.

The Pre-Construction Services scope of work will generally include design collaboration, estimating, scheduling, value engineering, and Guaranteed Maximum Price (GMP) Development. See Appendix D for more details.

Upon approval, the Owner will enter into an agreement with the selected Proposer to perform the Pre-Construction Services.

During the Pre-Construction Services period, the selected Proposer will prepare and submit the GMP(s). The GMP(s) will be based on early equipment selection and the Final Pricing Package, which will include partial design of the Work (approximately 60 percent complete construction documents (drawings and specifications)). Early equipment/material procurement may require up to three pre-final pricing packages and GMPs covering specific portions of the Work.

Subsequent to successful negotiation of the GMP(s) and Construction Contract, the proposed Construction Contract will be recommended for final authorization.

Additional design details will be issued to the selected Proposer in a sequence of packages as construction progresses.

If at any time satisfactory negotiations of the Pre-Construction Services Proposal, the GMP(s), or the Construction Contract cannot be obtained, negotiations may be conducted, in the sole discretion of the Owner, with the second ranked, and then the third ranked, and so on, Proposers. If the Owner is unsuccessful in its first round of negotiations, it may reopen negotiations with any Proposer with whom it previously negotiated. The scope of the work may be changed during this negotiation process at the discretion of the Owner in an effort to reduce the cost and/or to benefit the project in any manner. The Owner reserves the right to engage in "Value Engineering" discussions during this negotiation process.

3.05 Projected Timetable

The following projected timetable is a working guide for planning purposes. The Owner reserves the right to adjust this timetable as deemed necessary by the Owner.

Event	Date
RFP Issuance	February 20, 2026
Optional Site Visit	March 3, 2026
Deadline for Submission of Questions and Requests for Clarification	March 6, 2026
Proposal Submission Deadline	March 20, 2026
Interview Period (if conducted)	March 30 - April 24, 2026
Authorize Award of Pre-Construction Services Contract	May 20, 2026
Finalize Negotiation of Construction Contract	June 17, 2026
Early Release Packages GMP Work Authorization	July 3, 2026
GMP Submission Due	July 29, 2026
Award of Construction Contract	September 11, 2026
Construction NTP	November 25, 2026

Section 4 Proposal Format and Contents

4.01 General

The information listed below shall be submitted with each Proposal and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs. Failure by a Proposer to include all listed items may result in the rejection of the Proposal. All items in all tabs shall be included in each copy of the Proposal.

4.02 Tab I –Affidavits

The Proposer shall complete the Proposal Affidavit, the Non-Collusion Affidavit of Proposer, the Proposer's License Certification, the Attestation Regarding Personnel Used in Contract Performance, and the Drug Free Workplace Affidavit and include under Tab.

4.03 Tab II – Corporate Profile

The Proposer shall provide the following:

- Name, address, and telephone number of Proposer's corporate headquarters, regional offices, subsidiaries and affiliates, if any. Provide name, title, and biographical summary of pertinent corporate officers.
- A statement of bonding capacity from the Proposer's surety company. Provide agent contact persons and telephone numbers. Define current maximum approved bonding program, allowable single project limit, and current bonded work backlog.
- A statement that Proposer has not defaulted on a project nor failed to complete a project within the past ten years. If this is not the case, explain.
- A statement that Proposer has not filed for bankruptcy or been judged bankrupt at any time over the past ten years. If this is not the case, explain.
- A statement that the Proposer has never abandoned a project, even temporarily, during a dispute. If this is not the case, please explain.
- A statement whether Proposer has or has not been involved in litigation as a plaintiff against an owner, design firm or construction contract administration firm, or served an owner with a claim for additional compensation prepared by an attorney or a claims consultant, excluding routine change order requests, in the past five years. If Proposer has, explain. List any lawsuits or administrative actions to which the Proposer is currently a party or has been a party (either as a plaintiff or defendant) during the past ten years. For each suit, list all parties and indicate whether any party was a bonding company, insurance company, an owner, or other. Identify the project giving rise to the suit or administrative action; explain the basis of the claim, and whether a settlement was reached or a judgment entered into for or against the Proposer, or the Proposer's bonding company or insurance company.

4.04 Tab III – Corporate Experience

The Proposer shall list out in tabular form a list of projects (up to ten) procured through similar alternate delivery methods and identify the procurement method for each project. Proposer shall identify the role that each proposed team member had on these projects, if any.

The Proposer shall identify its experience in the performance of Pre-Construction Services which will be required on this project, specifically (1) collaborating with Owner's engineering and operations personnel and design engineers in the advancement of design concepts and vetting of ideas leading toward the preparation of construction documents, (2) value engineering reviews, (3) preparing cost estimates on partially completed construction document, (4) project scheduling, and (5) developing GMP.

4.05 Tab IV – Corporate Construction Experience

The Proposer shall provide information for projects (minimum of five, maximum of ten) of similar size, scope, previously performed or currently in progress for all owners within the past ten years. Information listed on the Project Reference Form provided with this RFP in Appendix B shall be provided in a format of the Proposer's choosing, but such information shall be clearly indicated. Only one project shall be listed on each form/project sheet.

Provide a matrix listing of all projects presently under construction and those projects that are booked and are pending Notice to Proceed. This matrix shall identify project construction value, remaining project duration, and the names of presently assigned construction superintendent and project manager

4.06 Tab V - Proposer's Team Experience

Provide an organizational chart showing how the Project would be staffed and managed for both pre-construction and construction services. Identify those primary personnel who will actively participate in the Pre-Construction Services workshops. Separately, also provide a listing of key support personnel "behind the scenes" who will support the primary personnel. Provide resumes of the primary personnel, which should identify the person's expertise, recent projects on which the expertise was applied, years of practice in their given role, overall years and roles in the A/E/C industry, years employed by the Proposer, and current office location.

Provide an organizational chart showing how the Project would be staffed and managed for Construction Services. Identify all managers and senior level supervisors, project manager, procurement managers and key support staff, schedulers, estimators, project superintendents, field superintendents, craft foreman, Quality Assurance/Quality Control Manager, and Safety Manager who would be assigned to the Project. Provide the resumes for these personnel, which should identify the person's expertise, recent projects on which the expertise was applied, years of practice in their given role, overall years and roles in the A/E/C industry, years employed by the Proposer, and current office location.

4.07 Tab VI – Acceptance of Conditions of Contract

The Proposer shall include a statement of acceptance of all terms and conditions of the Agreements, General Conditions and other provisions included in Appendix E. The Proposer may present suggested changes to the documents contained in Appendix E, which may or may not be accepted by Owner.

4.08 Tab VII – Proposer’s Proposed Fees

Provide on the form in Appendix C the proposed Pre-Construction Services Fee, Construction Services Fee and Core Project Management Team Costs.

The Owner will not entertain a Proposal whereby a Contractor would perform Pre-Construction Services for free, presumably as an enticement for selection. Therefore, a minimum fixed fee is established in Appendix C. A Proposer may increase such fixed fee if it deems the minimum is an insufficient fee for such services.

The Construction Services Fee Percentage (for Overhead and Profit) will be multiplied by the agreed to Guaranteed Maximum Construction Cost to become the Contractor’s Fee as used in the Contract Agreement for Construction. The product of the Construction Services Fee Percentage times \$20,000,000 is for comparison purposes only and is not guaranteed.

The Owner may decide not to accept the Guaranteed Maximum Price of selected Proposer or may decide not to construct the project. Should this occur, the successful Proposer will be compensated an equitable amount of the Pre-Construction Services Fee performed to date and terminate its contract with the successful Proposer.

As stated in the General Conditions, subcontracts will be competitively bid in accordance with the Owner’s Purchasing Policy and Purchasing Guidelines. Selection of Contractor or subcontractor to perform the work shall be made in the best interest of Henry County Water Authority, Contractors are not precluded from competing to self-perform the work.

4.09 Tab VIII - Appendices

The content of this tab is left to the Proposer's discretion. However, the Proposer should limit materials included here to those that will be helpful to the Owner in understanding the Proposal.

APPENDIX A

Affidavits

Proposal Affidavit

TO: Henry County Water Authority

FROM: _____
(Proposer's Name)

FOR: East Lake Booster Pump Station (BPS) Relocation

Submitted: _____, 2026

The undersigned Proposer, in compliance with your Request for Proposal for this Project, having examined the Request for Proposal Documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to perform Pre-Construction Services and to submit a Guaranteed Maximum Price Proposal to construct the Project in accordance with the said Documents.

The Proposer proposes and agrees, if this Proposal is accepted, to contract with the Henry County Water Authority in the form of Contract Agreement(s) specified, to furnish all Pre-Construction Services and Construction Services necessary to complete the Work in full and complete accordance with the reasonably intended requirements of the Contract Documents to the full and entire satisfaction of the Henry County Water Authority with a definite understanding that no money will be allowed for extra work except as set forth in the Contract Documents.

The Proposer hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Proposal. By the signature provided below, the signer affirms that the information provided herein is true and correct to the best of his/her knowledge and belief.

Proposer acknowledges receipt of the following Addenda:

Addendum No. 1, dated: _____ Addendum No. 5, dated: _____
Addendum No. 2, dated: _____ Addendum No. 6, dated: _____
Addendum No. 3, dated: _____ Addendum No. 7, dated: _____
Addendum No. 4, dated: _____ Addendum No. 8, dated: _____

PROPOSER: _____

By: _____
(name signed)

(name printed or typed)

Title: _____

Address: _____

Phone: _____

Primary Contact: _____

Primary Contact e-mail address: _____

Attest: _____
(name signed)

(name printed or typed)

Title: _____

(SEAL)

Note: Attest for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a notary.

Note: If the Proposer is a corporation, the Proposal shall be signed by an officer of the corporation; if a partnership, it shall be signed by a partner. If signed by others, authority for signature shall be attached.

Non-Collusion Affidavit of Proposer

STATE OF GEORGIA

COUNTY OF HENRY

I, _____, being first duly sworn, depose and say that:

He or she is _____
(Owner, Partner, Officer, Representative or Agent)

of _____, the Proposer that has submitted the attached Proposal;

He or she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

Such Proposal is genuine and is not a collusive or sham Proposal;

Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Proposer, firm or person to submit a collusive or sham Proposal in connection with the Project for which the attached Proposal has been submitted or to refrain from proposing in connection with such Project, or has in any manner, directly or indirectly, sought to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Henry County Water Authority or any person interested in the proposed Project.

PROPOSER: _____

By: _____
(name signed)

Title: _____

Date: _____

Subscribed and sworn to me this ___ day of _____, 20___

NOTARY PUBLIC: _____
(name signed)

(name printed or typed)

Commission Expires: _____

(SEAL)

Proposer's Utility Contractor License Certification

Proposer's Name: _____

License Number: _____

License Classification: _____

Expiration Date of License: _____

I certify that the above information is true and correct and that the classification noted is applicable to the Proposal for this Project.

PROPOSER: _____

By: _____
(name signed)

(name printed or typed)

Title: _____

Date: _____

Proposer's Utility Manager's License

Proposer's Name: _____

License Number: _____

License Classification: _____

Expiration Date of License: _____

I certify that the above information is true and correct and that the classification noted is applicable to the Proposal for this Project.

PROPOSER: _____

By: _____
(name signed)

(name printed or typed)

Title: _____

Date: _____

Attestation Regarding Personnel Used in Contract Performance

Project Name: East Lake Booster Pump Station (BPS) Relocaiton

The Proposer/Contractor, identified below, does hereby attest, certify, warrant, and assure that the Proposer/Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

PROPOSER/CONTRACTOR: _____

By: _____

(name signed)

(name printed or typed)

Title: _____

Date: _____

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Proposer/Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Proposer/Contractor.

Drug-Free Workplace Affidavit

By signature on this affidavit, the Proposer certifies that:

_____ It has a drug-free workplace program that complies with O.C.G.A. Section 50-24-1 through 50-24-6, the "Drug-free Workplace Act" which was in effect at the time of submission of this Bid, at least to the extent required of governmental entities.

_____ It has less than five employees receiving pay.

(Please indicate which one, or both, that are correct.)

Pursuant to O.C.G.A. Section 50-24, by signature on this affidavit, the Proposer attests that it operates a drug-free workplace program, or other drug or alcohol testing program with requirements at least as stringent as that of the program operated by the Owner.

PROPOSER: _____

By: _____
(name signed)

(name printed or typed)

Title: _____

Date: _____

APPENDIX B

Project Reference Form

Project Reference Form

Project Name:	
Owner's Name:	
Owner's Phone Number:	
Owner's Contact Name & Title:	
Type of Contract (Progressive Design Build, CMAR, etc.)	
Engineer/Architect/ Construction Manager's Name:	
Engineer/Architect/ Construction Manager's Phone Number:	
Engineer/Architect/ Construction Manager's Contact Name & Title:	
Pre-Construction Services Contract Value:	
Final Contract Value of Project:	
Project Description:	
Original Project Duration:	
Original Project Completion Date:	
Actual Project Completion Date:	
Explanation for later project completion date or contract value overrun, if applicable:	

List Major Subcontractor's; names, contact phone numbers

List Major Material Suppliers' names, contact phone numbers

List Proposer's Primary Project Management Team Members (Project Manager, Site Superintendent, etc. –Note if still employed by Proposer)

APPENDIX C

Proposal Cost Form

Proposer's Proposed Fee

Pre-Construction Services Fee

Construction Services Fee

Core Project Management Team Costs

Proposer's Proposed Fees

Pre-Construction Services Fee

Minimum Fee	\$	25,000.00
Additional Fee (Proposer's discretion, cannot be negative)	\$	_____
Total Pre-Construction Services Fee	\$	_____

Construction Services Fee

Total Construction Services Fee (Overhead and Profit), excluding core project management team costs as shown below, expressed as a percentage of the Guaranteed Maximum Cost of the Work. For comparison purposes, \$20,000,000 will be used as the estimated Guaranteed Maximum Cost of the Work

_____ % x \$20,000,000 = \$ _____

Core Project Management Team Costs*

Core Project Management Team Member	Unit Cost Per hour**	Estimated Hours***	Extended Cost
Construction Manager		1640	
Procurement Specialist		1200	
Cost Estimator		600	
Scheduler		1720	
On-Site QA/QC Specialist		1720	
Site Superintendent		2420	
Safety Specialist		1720	
Administrative Assistant		1720	
Total Cost Core Project Management Team****:			\$

* Core Project Management Team Costs will be included in the Guaranteed Maximum Cost of the Work, and will be paid on an hourly basis as all other Costs of the Work items.

** Unit costs shall include all labor, labor burden and fringe benefits.

*** Actual hours may vary based upon scope and project duration

**** Total Cost will be evaluated similarly to Construction Services Fee as to overall Overhead and Profit costs to Owner for the Construction Period

APPENDIX D

Project Description

Pre-Construction Services Scope of Work

Construction Services Scope of Work

Project Description

The project consists of replacing the existing East Lake BPS with a new BPS on the existing site, as well as approximately 5,000 linear feet (LF) of new 24" and 30" water main outside of the existing BPS property (suction and discharge piping) to improve the system hydraulics. The new BPS is anticipated to have the following features:

- Utilize horizontal split case pumps
- Site piping designed to maintain the existing operations of the onsite ground storage tanks
- The new BPS will require a diesel or natural gas generator with an automatic transfer switch
- The existing BPS interior will be demolished and the building will be left for storage if possible.
- The new building will have a roll up door and include a crane system in the building
- VFDs will be installed
- The building will have a climate controlled electrical room, with the rest of the building only receiving heat

The following figure is a schematic of the project work for reference.



Pre-Construction Services Scope of Work

Pre-Construction Services will include the Selected Proposer (Contractor) working with the Owner and its engineer to share ideas and experience in assisting the engineer in developing construction documents suitable for construction and suitable for preparing a Guaranteed Maximum Construction Cost.

Following execution of the Pre-Construction Services Agreement and issuance of a Notice to Proceed (NTP), and upon engineer's preparation of preliminary concept documents, Proposer shall perform the following services:

1. Attend one half-day kickoff meeting / workshop at the offices of the Owner to review the project concepts.
2. Attend monthly half-day workshop meetings at the offices of the Owner to discuss the project, identifying and vetting key concerns to incorporate into the design as they relate to construction cost and schedule, as well as facility operations and performance. Attend two-hour virtual meetings two weeks after all the half-day workshop meetings. Prepare for these meetings accordingly.
3. Provide design development support during and in advance of each workshop which could include use of collaborative software such as Bluebeam Studio Plans.
4. Provide construction cost estimates throughout the course of the Pre-Construction Services with the appropriate level of detail and contingency based on level of information available. Such estimates will be based initially on basis of design memorandum concepts within 30 days after Notice to Proceed and updated routinely, at a minimum frequency of each workshop.
5. Provide "live" level of magnitude cost estimating at the workshops as ideas are considered and vetted.
6. Provide sequencing of construction activities/planning and coordination support during Pre-construction period.
7. Provide alternative systems/equipment evaluation and constructability reviews as the design progresses.
8. Advise on ways to reduce costs and or schedule without adversely impacting quality or design integrity.
9. Propose subcontract procurement procedures which ensure compliance with Owner's Purchasing Policy guidelines.
10. Identify work elements of the Project which will be beneficial to the Project and Henry County Water Authority if such was self-performed by the Contractor.
11. Identify elements of the Project which have significant supply chain issues and are candidates for early release packages.

12. Identify elements of the Project which, by the nature of the scope of work, are candidates for early release packages.

13. Provide formal reviews of approximately 30% and 60% complete documents.

The Contractor shall have attending at the workshop meetings in Items 1 and 2 above the Contractor's project manager, procurement specialist, cost estimator, and scheduler, plus any other persons whom it deems appropriate. Payment of the full amount of the Pre-Construction Services Fee is contingent upon the appropriate persons attending and contributing to the aforementioned workshop meetings.

Upon conclusion of evaluating input from Contractor on the 60% documents, Owner's engineer will incorporate such items as it deems appropriate, with the resulting modified 60% documents constituting the Issue for GMP Package described elsewhere in the RFP.

Upon receipt of the Issued for GMP Package, the Contractor shall:

1. Thoroughly review these documents;
2. Develop a Guaranteed Maximum Construction Cost (for each package, if applicable);
3. Develop a list of assumptions for matters not in the issued for GMP Package on which the GMP is based.
4. Prepare a detailed schedule of construction of the project;
5. Prepare a list of additional details needed to supplement the 60% complete construction documents and when such details would be needed to complete the project within the allotted time.
6. Attend a minimum of two all-day meetings at the offices of the Owner, to present the basis of the amount of the Guaranteed Maximum Construction Cost and negotiate in good faith based on open book cost estimates.
7. Attend two all-day workshop meetings, in addition to those listed above, excluding the effort for GMP pricing and negotiation, at the offices of the Owner.

The Owner may decide not to accept the GMP of Contractor or may decide not to construct the project. Should this occur, the Contractor will be compensated an equitable amount of the Pre-Construction Services Fee performed to date and terminate its contract with the Contractor.

Upon acceptance of the initial GMP, the Owner will present the Agreement for construction to the Board for approval. Upon acceptance of final GMP, the Pre-Construction Services shall be completed.

Construction Services Scope of Work

The Construction Manager at Risk (Contractor) will be responsible for all matters of construction in accordance with the Contract Agreement, General Conditions and other provisions as included in Appendix E and in accordance with the Final Pricing Package construction documents and subsequent detailed information prepared by the Owner's engineer related to the Final Pricing Package construction documents.

Contractor responsibilities shall generally be as follows:

1. Plan, schedule and manage the construction of the East Lake BPS Replacement with the key personnel (construction manager, procurement support staff, cost estimator, scheduler, on-site QA/QC manager, site superintendent and administrative assistant) both on-site and at Contractor's offices.
2. Upon acceptance of the final GMP, Contractor shall continue to collaborate with Barge and Owner to advance the design package suitable for regulatory approval and construction, providing input into additional details needed for Barge to complete the Issued for Construction package. Such services will be a part of the Cost of the Work for Construction Services. Thus, Contractor shall attend monthly half-day workshop meetings at the offices of the Owner to discuss the project, identifying and vetting key concerns to incorporate into the design as they relate to construction cost and schedule, as well as facility operations and performance. Attend two-hour virtual meetings two weeks after all the half-day workshop meetings. Prepare for these meetings accordingly. Until Issued for Construction (IFC) packages are issued
3. Prepare for and participate in Construction Progress Meetings at the offices of the Owner on a monthly basis.
4. Maintain health and safety guidelines and requirements and ensure subcontractors' adherence to provide a safe work site for all project participants
5. Manage the construction to be not more than the GMP.
6. Manage construction schedule and cash flow to match Owner's project funding.
7. Construct and commission the facilities described in the project's scope of work covered by the GMP.
8. Coordinate sequencing of construction activities/planning with the Owner.
9. Comply with all Federal, State, and local construction permitting requirements.
10. Coordinate work of all subcontractors.
11. Provide construction Quality Control/Quality Assurance program
12. Submit project accounting system for a determination of adequacy of necessary cost data and cost allocation capabilities in accordance with generally accepted accounting principles.
13. Provide regular open book financial status reports on project costs

14. Manage construction work to assure compliance with all equipment warranties
15. Work with the Owner and Owner's engineer to identify and develop specific bid packages for the Work required for this project.
16. Develop a list of qualified potential subcontractors for acceptance/veto by the Owner.
17. Invite subcontractors (from the aforementioned accepted list) to provide a letter of interest and qualifications for Work described in the bid packages required for this project. Contractor shall identify all areas of Project on which they desire to self-perform the work.
18. Invite proposals from subcontractors for the various bid packages required for this project.
19. Invite proposals from prospective vendors for materials and equipment required for this project.
20. Manage the procurement process for all materials, equipment and subcontracted services procured by the Contractor, inclusive of bid solicitations, issuance of bid package documents and addenda, public opening of bid proposals, and award of subcontracts. All public bid openings shall occur at the offices of the Owner, in the presence of the Owner and Owner's engineer at a time and date agreed to by the Owner.
21. The Contractor will hold all construction contracts and will provide performance and payment bonds in the amount of the Guaranteed Maximum Price.

APPENDIX E

Contract Provisions

Contract Agreement for Pre-Construction Services

Contract Agreement for Construction

General Conditions

Supplementary Conditions

AGREEMENT FOR CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES

THIS AGREEMENT FOR PRE-CONSTRUCTION SERVICES, made and entered into by and between Henry County Water Authority, with its principal place of business located at 1695 GA-20, McDonough, GA 30253, hereinafter referred to as "Owner" and Name of the Company, with its principal place of business located at Address of the Company a corporation chartered and existing under the laws of the State of Georgia, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, Owner desires to obtain pre-construction services and Contractor firm possesses broad experience, knowledge and technical resources to provide such services related to the Design, Permitting and Construction Management of the Henry County Water Authority East Lake Booster Pump Station (BPS) Relocation, hereinafter referred to as "Project";

WHEREAS, Owner desires to contract with Contractor for the work and Contractor desires to accept and perform such services and to be responsible for the overall completion of the Project as more specifically described herein below;

WHEREAS, Contractor agrees to provide services defined and set forth in the written proposal to Owner from Contractor, dated ____ day of _____, attached hereto and incorporated herein by reference; and

WHEREAS, the Owner desires to contract with Contractor for the work and Contractor is willing and able to undertake and complete this work upon the terms, covenants, recitals and conditions hereinafter set forth:

NOW THEREFORE, for and in consideration of compensation as set forth in Article 2 below by Owner for the services to be rendered by Contractor and of the covenants and promises to be carried out by each party herein, it is agreed by and between the parties that the Owner hereby contracts said Contractor and said Contractor hereby accepts such contract to perform the services hereinafter defined upon the terms and conditions set forth herein.

ARTICLE 1 – PRE-CONSTRUCTION SERVICES

1. Contractor agrees to furnish all pre-construction services, as hereinafter described in the Detailed Scope of Services, marked as Attachment A, and incorporated herein by reference.
2. This Agreement for Pre-Construction Services shall commence on ____ day of _____, 2026, and terminate upon conclusion of Guaranteed Maximum Price (GMP) negotiations.

ARTICLE 2 – COMPENSATION

1. The Owner shall compensate Contractor for providing the services rendered by Contractor described in this Agreement for Pre-Construction Services at a lump sum fee of _____ Dollars \$_____. This fee shall include design review, estimating, scheduling, value engineering, Guaranteed Maximum Price preparation and other services, office support and similar services rendered by Contractor, its agents or employees, including any consultants or subcontractors.

2. In the event of any legal proceedings or other claims requiring services of Contractor in providing expert testimony on behalf of the Owner in connection with the Project, except suits or claims by a third party against the Owner arising out of alleged errors or omissions of Contractor, the Owner shall provide additional compensation to Contractor.

ARTICLE 3 – PAYMENT

Payment to Contractor, as described in Article 2, is to be made as follows:

1. Contractor shall submit its monthly invoice describing the work performed during the preceding month. Invoices shall include documentation to support the requirements of the grant funding, including detailed billing descriptions, backup documentation, etc. The Owner shall make payment to Contractor within thirty days after the receipt of the said invoice.
2. If the Owner does not dispute accuracy of full invoice and does not make monthly payments in full within sixty days from the receipt of an invoice, Contractor may suspend performance of Services, or to immediately terminate this Agreement in the event any invoice remains unpaid for ninety days on the basis of non-performance on the part of the Owner. Interest at the rate of two percent per annum shall be payable on any amounts which are due but unpaid after sixty days after receipt of such invoice. When such progress payments are restored, Contractor shall resume providing all agreed upon Services.

ARTICLE 4 – GENERAL TERMS AND CONDITIONS

1. COMMENCEMENT OF WORK. The performance of Contractor services described in the Attachment A shall be commenced within 7 calendar days after receipt of an authorization in the form of a Notice to Proceed from the Owner by Contractor.
2. PROFESSIONAL STANDARDS. The Contractor shall be responsible, to the level of care and skill ordinarily used by practicing professionals in the same type of work in the Owner's community, for the professional and technical soundness, accuracy, and adequacy of all consultation, cost estimating, pre-construction and other services and materials furnished under this Agreement.
3. PROJECT PROGRESS. Contractor services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
4. PROJECT TIME. Should completion of the services be delayed for cause(s) beyond Contractor's reasonable control, including force majeure, the time for performance shall be extended for a period mutually agreed upon by the parties or if the parties cannot agree then a reasonable time.
5. PROJECT DELAYS. Contractor will perform the required services in a timely manner and comply with schedule requirements requested by Owner, but it is agreed between the parties to the Agreement that Contractor cannot be responsible for delays occasioned by factors beyond Contractor control, nor by factors which could not reasonably have been foreseen at the time this Agreement was prepared and executed.
6. CONFIDENTIALITY. Contractor shall not disclose nor permit disclosure of any information designated by the Owner as confidential, except to its employees and other

consultants who need such information in order to properly execute the services of this Agreement.

7. **ASSIGNMENTS.** The Owner and Contractor each binds himself and his partners, administrators and assigns to the other party of this Agreement, and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the Owner nor Contractor shall assign his or their interest in this Agreement without the written consent of the other. Contractor may enter into subcontracts with respect to the services required by this Agreement but shall remain fully responsible to the Owner in connection therewith. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.
8. **PERSONNEL.** Contractor, an Equal Opportunity Employer, (including any agents, employees, subcontractors, successors and assigns of Contractor), now has or will secure at its own expense, personnel required to perform the services under this Agreement. Such personnel are not employees of, nor have any contractual relationship with the Owner. Contractor acknowledges responsibility for all federal, state, and local requirements for employers that apply to Contractor.
9. **INSURANCE.** Contractor shall, during the performance of the Agreement, keep in force insurance with the following requirements:
 - The Owner and Owner's consultants shall be shown as an Additional Insured on all coverages, except Worker's Compensation and Professional Liability.
 - These certificates shall require that coverage afforded under the policies will not be canceled unless at least 30 days prior to cancellation written notice has been given to the Owner. The policy in existence is to read as the certificates read.
 - The insurance company used by Contractor must be licensed to do business by the state of Georgia, and have an A.M. Best rating of "A" or higher except in the worker's compensation category.
 - The Certificates of Insurance, and any subsequent renewals, shall reference the Project.
 - Required Coverages:
 - Statutory Worker's Compensation
 - Employer's Liability:
 - Bodily Injury by Accident - \$100,000 each accident
 - Bodily Injury by Disease - \$500,000 policy limit
 - Bodily Injury by Disease - \$100,000 each employee
 - If self-insured, proof of filing with the State of Georgia and secured, set aside funds shall be required.
 - General Liability
 - \$1,000,000 Limit of liability per occurrence for bodily injury and property damage
 - Automobile Liability Insurance
 - \$1,000,000 limit of liability per occurrence for bodily injury and property damage.
 - Coverage to include all owned non-owned and hired vehicles.
 - Professional Liability Insurance with \$1,000,000 limit.

Within ten days after execution of this contract and during the entire period of Contractor responsibility under this contract, Contractor shall maintain professional liability insurance as provided herein. Contractor shall file with the Owner the

certificate from an insurance company authorized to do business in the State of Georgia showing issuance of professional liability insurance (errors and omissions insurance).

10. **OWNERSHIP OF WORK PRODUCT.** Contractor shall maintain detailed records of its Services relating to this Agreement for Pre-Construction Services and upon completion of the Project, such records, including all accounts, bills, vouchers, associated documentation and estimates relative thereto, become the property of the Owner. If the Owner should reuse the Project's information, it shall assume full responsibility therefor.
11. **TERMINATION.** The Owner may terminate this agreement at any time by providing a thirty-day notice to the Contractor. If this Agreement is terminated, Contractor shall be compensated for work actually performed and expenses incurred plus any profits earned up to date of termination. Notice of termination shall be given by the Owner through certified mail, return receipt requested, to the principal office of the Contractor. The effective date of termination shall be 10 days after the date of receipt of the notice.
12. **COST ESTIMATES.** Contractor's opinions of probable cost, are to be made on the basis of Contractor's experience and qualifications and represent Contractor's best judgment as a qualified professional familiar with the industry.
13. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses including claims, consultants, and attorney's fees arising out of or resulting from the performance of the work associated with the Project and is caused in whole or in part by any act or omission of Contractor, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
14. Notwithstanding anything herein to the contrary, neither Contractor nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

ARTICLE 5 – THE OWNER'S RESPONSIBILITIES

The Owner shall:

1. Upon request from Contractor, provide all criteria and full information as to its requirements for the Project, including design objectives and constraint, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the Owner will require to be included in the Project's design.
2. Designate a person to act as its representative with respect to the services to be rendered under this Agreement for Pre-Construction Services. Such person will have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Contractor services.
3. Furnish to Contractor all non-confidential technical data in its possession which it may lawfully release, including but not limited to, maps, surveys, drawings, soils or geotechnical reports, and any other information required by Contractor, all of which may be used and relied upon in performing services under this Agreement.

4. Arrange for access to and make all provisions for Contractor to enter upon public and private property as required for Contractor to perform services under this Agreement.
5. May examine all studies, reports, sketches, estimates, and other documents presented by Contractor.

ARTICLE 6 – EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the Owner and Contractor with respect to the subject matter of this Agreement and supersedes all prior understandings, negotiations, representations or agreements, either written or oral contracts between Owner and Contractor respecting this Project. This Agreement will be binding upon and inure to the benefit of Owner and Contractor and their respective successors and assigns.

ARTICLE 7 – GOVERNING LAW & JURISDICTION

Arbitration will not be allowed on this project. The terms of the Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Georgia, without regard to its conflict of law provisions. Contractor hereby submits to the jurisdiction of the Superior Courts of Henry County and will obtain and maintain an agent for service of process in the State of Georgia. Neither party will bring any action against the other party arising out of or relating to this Agreement in any forum or venue except the Superior Court of Henry County. Contractor irrevocably waives any present or future objections to such legal action and irrevocably waives the right to bring any legal action in any other jurisdiction.

Executed the ____ day of _____, 2026, in three counterparts.

OWNER:
Henry County Water Authority

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

Physical Address

1695 GA-20

McDonough, Georgia 30253

License No.: _____

ATTACHMENT A

Pre-Construction Services Scope of Work

Pre-Construction Services will include the Selected Proposer (Contractor) working with the Owner and its engineer to share ideas and experience in assisting the engineer in developing construction documents suitable for construction and suitable for preparing a Guaranteed Maximum Construction Cost.

Following execution of the Pre-Construction Services Agreement and issuance of a Notice to Proceed (NTP), and upon engineer's preparation of preliminary concept documents, Proposer shall perform the following services:

1. Attend one half-day kickoff meeting / workshop at the offices of the Owner to review the project concepts.
2. Attend monthly half-day workshop meetings at the offices of the Owner to discuss the project, identifying and vetting key concerns to incorporate into the design as they relate to construction cost and schedule, as well as facility operations and performance. Attend two-hour virtual meetings two weeks after all the half-day workshop meetings. Prepare for these meetings accordingly.
3. Provide design development support during and in advance of each workshop which could include use of collaborative software such as Bluebeam Studio Plans.
4. Provide construction cost estimates throughout the course of the Pre-Construction Services with the appropriate level of detail and contingency based on level of information available. Such estimates will be based initially on basis of design memorandum concepts within 30 days after Notice to Proceed and updated routinely, at a minimum frequency of each workshop.
5. Provide "live" level of magnitude cost estimating at the workshops as ideas are considered and vetted.
6. Provide sequencing of construction activities/planning and coordination support during Pre-construction period.
7. Provide alternative systems/equipment evaluation and constructability reviews as the design progresses.
8. Advise on ways to reduce costs and or schedule without adversely impacting quality or design integrity.
9. Propose subcontract procurement procedures which ensure compliance with Owner's Purchasing Policy guidelines.
10. Identify work elements of the Project which will be beneficial to the Project and Henry County Water Authority if such was self-performed by the Contractor.

11. Identify elements of the Project which have significant supply chain issues and are candidates for early release packages.
12. Identify elements of the Project which, by the nature of the scope of work, are candidates for early release packages.
13. Provide formal reviews of approximately 30% and 60% complete documents.

The Contractor shall have attending at the workshop meetings in Items 1 and 2 above the Contractor's project manager, procurement specialist, cost estimator, and scheduler, plus any other persons whom it deems appropriate. Payment of the full amount of the Pre-Construction Services Fee is contingent upon the appropriate persons attending and contributing to the aforementioned workshop meetings.

Upon conclusion of evaluating input from Contractor on the 60% documents, Owner's engineer will incorporate such items as it deems appropriate, with the resulting modified 60% documents constituting the Issue for GMP Package described elsewhere in the RFP.

Upon receipt of the Issued for GMP Package, the Contractor shall:

1. Thoroughly review these documents;
2. Develop a Guaranteed Maximum Construction Cost (for each package, if applicable);
3. Develop a list of assumptions for matters not in the issued for GMP Package on which the GMP is based.
4. Prepare a detailed schedule of construction of the project;
5. Prepare a list of additional details needed to supplement the 60% complete construction documents and when such details would be needed to complete the project within the allotted time.
6. Attend a minimum of two all-day meetings at the offices of the Owner, to present the basis of the amount of the Guaranteed Maximum Construction Cost and negotiate in good faith based on open book cost estimates.
7. Attend two all-day workshop meetings, in addition to those listed above, excluding the effort for GMP pricing and negotiation, at the offices of the Owner.

The Owner may decide not to accept the GMP of Contractor or may decide not to construct the project. Should this occur, the Contractor will be compensated an equitable amount of the Pre-Construction Services Fee performed to date and terminate its contract with the Contractor.

Upon acceptance of the initial GMP, the Owner will present the Agreement for construction to the Board for approval. Upon acceptance of final GMP, the Pre-Construction Services shall be completed.

THIS AGREEMENT is by and between Henry County Water Authority ("Owner") and _____ ("Contractor")

Owner and Contractor hereby, agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is described in each Work Authorization.

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

East Lake Booster Pump Station Relocation

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Barge Design Solutions, Inc. (Engineer) who shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. For the purposes of authority under this Contract, the terms Landscape Architect and Architect shall be deemed synonymous with Engineer.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed in accordance with milestone schedule shown below, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions in accordance with the milestone schedule shown below.

- Dates or Days after Notice to Proceed to achieve Substantial Completion and Final Completion of Work (Work is completed and ready for final payment) associated with each Work Authorization are described in each Work Authorization.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time.

Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner the amount set forth in the associated Work Authorization for each day that expires after the date specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner the amount set forth in the associated Work Authorization for each day that expires after the date specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment. These liquidated damages shall be the Owner's sole and exclusive remedy for Contractor's delay in achieving Substantial Completion within the Contract Time.

- B. Liquidated Damages associated with Substantial Completion, Final Completion and Milestones shall be additive and cumulative.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

- A. For all Work, the Cost of the Work plus a Contractor's lump sum fee for overhead and profit, all of which shall be determined as provided in Articles 6 and 7 below, subject to additions and deletions as provided in the Contract Documents and subject to the limitations set forth in Article 8 below.

ARTICLE 6 – COST OF THE WORK

- 6.01 Cost of the Work shall be determined as provided in Paragraph 11.01 of the General Conditions.
- 6.02 The Core Project Management Team Costs will be included in the Cost of the Work and shall be based upon actual hours charged to the Project for the performance of the Work at the unit cost per hour as provided in Contractor's

proposal.

ARTICLE 7 – CONTRACTOR’S COMPENSATION

7.01 Contractor’s compensation shall be determined as follows:

- A. A fee of _____ Percent (____%) of Cost of the Work which shall be subject to increases or decreases for changes in the Work as provided in Paragraph 9.01.A below.

ARTICLE 8 – GUARANTEED MAXIMUM PRICE

8.01 Project Delivery Approach.

- A. The construction of the Project will be delivered through Work Authorizations as agreed upon by the Owner and Contractor. Each Work Authorization represents a portion of the Project and will include a Work Authorization Guaranteed Maximum Price (GMP) Proposal.
- B. Contractor shall meet with Owner to review each Work Authorization GMP Proposal. Once the Owner agrees to accept a Work Authorization GMP Proposal, Owner and Contractor shall execute a Work Authorization, which form is attached hereto as Exhibit A and which shall establish the Work Authorization GMP for the applicable portion of the Project. The Work Authorization GMP may be amended by Change Order as provided in the Contract Documents.
- C. The parties agree that each Work Authorization GMP shall be included as a part of the total GMP for the entire Project. The GMP for the entire Project shall be fully established in the final Work Authorization of the Project.
- D. Any reference in the Contract Documents to “GMP” or “Guaranteed Maximum Price” shall mean the final Guaranteed Maximum Price for the entire Work, including Contingency.
- E. Each Work Authorization will specify
 1. Scope of Work related to Paragraph 1.01 above, which may include Contractor’s GMP Proposal, and its assumptions and clarifications,
 2. Contract Times as described in Paragraph 4.02 above,
 3. Liquidated Damages as described in Paragraph 4.03 above, and
 4. GMP amount as described in Paragraph 8.02 below.

8.02 Contractor guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, which is the sum of Cost of the Work plus Contractor’s fee, not including Pre-Construction Services Fee), will not exceed the amount set forth in the final Work Authorization for the Project, subject to increases or decreases for changes in the Work. The final Work Authorization shall contain

the total GMP for the entire Work, which is the sum of all Work Authorizations.

- 8.03 Costs which would cause the GMP to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
- 8.04 Wherever in these Contract Documents the term "Contract Price" occurs, such shall mean "Guaranteed Maximum Price".
- 8.05 If the sum of the actual Cost of the Work and the Contractor's Fee is less than the GMP, then the difference, less unused Cash Allowances (if any listed in GMP Proposal) and less unused Contingency Allowance (which has not been transferred to the Cost of the Work via Work Authorization), shall be divided such that the Owner shall pay the Contractor Fifty Percent (50%) of the difference, with the Owner retaining Fifty Percent (50%) of such difference.
- 8.06 Owner and Contractor shall have the option to negotiate a lump-sum conversion at any time during the performance of the Work whereby the cost-plus reimbursement provisions of this Agreement will be converted into a lump sum amount.

ARTICLE 9 – CHANGES IN THE CONTRACT PRICE

- 9.01 The amount of any increases or decreases in Contractor's fee or in any Guaranteed Maximum Price which results from a Change Order shall be set forth in the applicable Change Order subject to the following:
- A. Any increase or decrease in the Contractor's fee resulting from net additions or decreases in the Cost of the Work shall be determined in accordance with Paragraph 12.01.C of the General Conditions.
 - B. the case of net additions in the Work, the amounts of any increase in the Cost of the Work shall be determined in accordance with Paragraph 12.01.B of the General Conditions.
 - C. In the case of net deletions in the Work, the amount of any such decrease in the Cost of the Work shall be determined in accordance with Paragraph 12.01.B of the General Conditions.

ARTICLE 10 – PAYMENT PROCEDURES

10.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will indicate the amount of Contractor's fee then payable. Applications for Payment will be processed by Engineer as provided in the General Conditions.

10.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer each month during construction as provided in Paragraphs 10.02.A.1 and 10.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. For Cost of Work: Progress payments on account of the Cost of the Work will be made as follows:
 - a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - 1) 95 percent Cost of Work completed (with the balance being retainage); and
 - 2) 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- C. For Contractor's Fee: Progress payments on account of the Contractor's Fee will be made as follows:
1. Contractor's fee payments will be in an amount equal to 100% percent of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work. In the event there is no schedule of values the progress of the Work will be measured as provided in the General Requirements, as defined in the General Conditions.

10.03 Final Payment

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

Article 11 - INTEREST

- 11.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of two percent per annum.

ARTICLE 12 – CONTRACTOR’S REPRESENTATIONS

- 12.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposal.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions.
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site- related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 12.01.E above, Contractor does not consider that 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 Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 13 – ACCOUNTING RECORDS

13.01 Contractor shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 11.01.D of the General Conditions and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Contractor's 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.

ARTICLE 14 – CONTRACT DOCUMENTS

14.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. General Conditions.
 - 5. Supplementary Conditions.
 - 6. Specifications as identified in each Work Authorization.

7. Drawings as identified in each Work Authorization.
8. Exhibits to this Agreement (enumerated as follows):
 - a. Form of Work Authorization.
9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Work Authorizations.
- B. The documents listed in Paragraph 14.01.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 14.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 15 – MISCELLANEOUS

15.01 *Tracked Changes*

- A. In order to comply with the Engineers Joint Contract Documents Committee License Agreement, all changes to the General Conditions have been reflected and preserved through track changes format. With respect to those changes, the Parties agree that all language in the General Conditions that is underlined, regardless of color, font, or shading, is included as terms of the General Conditions and are enforceable and binding terms of the General Conditions (e.g., Article 2, Section 2.02(A): “Contract Documents and one counterpart of the executed Contract Agreement”). Also, with respect to those changes, the Parties agree that all language in the General Conditions that is struck-through, regardless of color, font or shading, is intended to be deleted from the terms of the General Conditions and such struck-through language is not a term of the General Conditions and is not binding or enforceable terms of the General Conditions (e.g., Article 2, Section 2.03(A): “~~thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated~~”).

15.02 *Terms*

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

15.03 *Assignment of Contract*

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

15.04 *Successors and Assigns*

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

15.05 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15.06 *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 15.06:
1. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value 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 prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the

bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ day of _____, 20 ____, (which is the Effective Date of the Agreement).

Approved as to Form Prior to Execution:

Attorney for Owner

OWNER:
Henry County Water Authority

By: _____
Signature

Title: _____

Attest: _____
Signature

Printed Name

Title: _____

Address for giving notices:
1695 Highway 20 West
McDonough, Georgia 30253

(Seal)

CONTRACTOR

By: _____
Signature

Printed Name

Title: _____

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

Attest: _____
Signature

Printed Name

Title: _____

Address for giving notices:

(Seal)

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, _____, the duly authorized and acting legal representative of Henry County Water Authority, do hereby certify as follows: I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and based upon the General Power of Attorney contained herein I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the parties represent that foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

Signature: _____

Name: _____

Date: _____

END OF SECTION

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**STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
- ~~16.1 *Designer*—The individual or entity named as such in the Agreement, if a different person or entity from Engineer.~~
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined. The term Drawings shall be considered synonymous with the term Plans.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 01 of the Specifications. The General Requirements are applicable to all Sections of the Specifications and to the entire Work.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- 25.1 *Liquidated Damages* – amounts shall be as stipulated in the applicable Work Authorization Agreement. Liquidated damages shall apply to the Contract Times for the Project. Liquidated Damages shall be both additive and cumulative. Liquidated Damages shall end upon Substantial Completion, Completion of the Work associated with each Milestone Date, and upon final completion of the Work. Liquidated damages are not a penalty, but constitute

liquidated damages for loss to the Owner because of increases in expenses for administration, legal counsel, accounting, engineering, construction supervision, inspection, and any other expenses incurred directly as a result of the delay of the Contractor in completing the work. This provision for liquidated damages shall be effective between the parties ipso facto without necessity for demand or putting in default by any notice or other means than by the terms of these Contract Documents, the Contractor hereby waiving any such other notice of default and acknowledging that the Contractor shall be deemed to be in default by the mere act of his failure to complete the work within the Contract Time, or within any valid extension of such time hereunder.~~pplicable Work Authorization~~

26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The Owner may designate an authorized representative to exercise the authority, in whole or in part, identified in these contract Documents, with such designation being identified in the Supplementary Conditions.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in ~~the~~ its table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, brochures, schedules, specified design related submittals, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work that will be fabricated or installed. Shop drawings may also mean detail drawings, working drawings, construction drawings, and engineering data.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents to provide the following: (i) the Owner full time, uninterrupted, continuous operation of the wWork; and (ii) all required functional, performance, and operational or startup testing has been successfully demonstrated for all components, devices, equipment, and systems to the satisfaction of the Engineer in accordance with the requirements of the Specifications; and (iii) all required inspections and other wWork necessary for the Engineer to certify "substantially complete" have been completed. ~~, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.~~ The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 44.1 Submittals – All administrative documents, Shop Drawings, Samples, product data, manufacturer's literature, quality control documents, design related documents, record documents, contract close-out documents, and/or any other specified document prepared or assembled by or for Contractor and submitted by Contractor to the Owner and/or Engineer.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, materials, tools, equipment, incidentals, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
 2. Where the word “similar” occurs in the Contract Document, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.

C. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance*: Before any Work at the Site is started, Contractor and Owner shall each deliver to the Owner ~~either~~, with copies to each additional insured ~~identified in the Supplementary Conditions~~, certificates of insurance (and other evidence of insurance which Owner ~~either of them~~).

or any additional insured may reasonably request) which Contractor ~~is and~~ Owner respectively ~~are~~ required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

- A. Owner ~~shall~~ will furnish to Contractor up to ~~ten~~ four printed or hard copies of the ~~Drawings and Project Manual~~ Contract Documents and one counterpart of the executed Contract Agreement. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

- A. ~~The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated~~ date established in the Notice to Proceed. A Notice to Proceed may be given at any time within ~~30~~ 60 days after the Effective Date of the Agreement. ~~In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~ Notwithstanding the foregoing, commencement of the Work shall not begin until ten (10) days after the last of the following is achieved:

1. Receipt of executed Contract by Contractor;
2. All permits which are the responsibility of Owner or Engineer, or reliant upon information provided by Owner or Engineer, necessary to commence the Work have been received;
3. Reasonable evidence has been provided to Contractor that Owner has secured financing in amounts sufficient to fulfill the Owner's obligations under the Contract;
4. Worksite is ready to allow unimpeded access to work by Contractor; and
5. Owner has issued a Notice to Proceed.

2.04 Starting the Work

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

2.05 Before Starting Construction

- A. Preliminary Schedules: Within 10 days after the ~~Commencement of the Contract Time~~ Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a preliminary Schedule of Submittals; which indicates each required Submittal and the dates for submitting, time for reviewing and processing each Submittal (periodic Submittals may be listed by a common monthly date); and
 3. a preliminary Schedule of Values for all of the Work in a format acceptable to the Engineer and in accordance with the requirements specified in the General Requirements, which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for

~~progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.~~

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. ~~At least 10 days before submission of the first Application for Payment a~~ Not more than ten days after the preconstruction conference, a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer as being the Contractor's schedule for the 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. The Progress Schedule may subsequently be adjusted in accordance with Paragraph 6.04 and applicable provisions of the General Requirements.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals. The Schedule of Submittals may subsequently be adjusted in accordance with Paragraph 6.04 and applicable provisions of the General Requirements.
 3. Contractor's Schedule of Values will be acceptable to the Engineer as to form and substance if it is provided in accordance with the General Requirements~~provides a reasonable allocation of the Contract Price to component parts of the Work.~~

ARTICLE 3 – CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The individual components of the Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents

or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.
- D. Each and every clause or other provision required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be amended to make such insertion.
- E. "Imperative" or "Command" type language is used in the Contract Documents. This command language refers to and is directed to the Contractor.
- F. Emphasis, such as italics, underlining, bold text or quotes, may have been used throughout the Contract Documents. Use of emphasis shall not change the meaning of the term emphasized.
- G. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, and the printed record version, the electronic version will govern.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.
 - 3. All sections of governing standard specifications relating to measurement and payment shall not apply to the Work specified herein.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

- 1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor

shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge or reasonably should have known thereof.
4. Notwithstanding the foregoing paragraphs, or anything else contained in the Contract, Contractor shall not be responsible for the design of the Project (unless specifically included in Contractor's scope of the Work) or any consequences or resulting performance due to the design, and nothing contained in this Contract shall serve to abridge, modify, or otherwise remove the implied warranty of plans and specifications provided by the Owner to Contractor.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In resolving inconsistencies within the Contract Documents, precedence shall be given in the following descending order:
 - a. Change Orders, with latest Change Order taking precedent over preceding Change Orders
 - b. Work Change Directives
 - c. Field Orders
 - d. Engineer's written interpretations and clarifications
 - e. Notice to Proceed
 - f. Addenda

- g. Contract Agreement
- h. Supplementary Conditions
- i. General Conditions
- j. Specifications
- k. Drawings
 - 1. Schedules on Drawings
 - 2. Notes on Drawings
 - 3. Details on Drawings
 - 4. Large Scale Drawings
 - 5. Small Scale Drawings
 - 6. Dimensions given as Figures
 - 7. Scaled Dimensions
- l. Bidding Requirements

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order; or
 - ~~2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or~~
 - ~~23.~~ Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

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

3.06 *Electronic Data*

~~A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.~~

~~B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.~~

~~C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.~~

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. When transmitting documents in electronic media format or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

D. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents, and the printed record version, the electronic version will govern.

3.07 *Contract Times*

A. All Contract Times and time limits stated in the Contract Documents are of the essence of the Agreement.

- B. The Contractor shall proceed with the Work at a rate of progress which will ensure completion within the Contract Times.
- C. It is expressly understood and agreed by and between the Contractor and the Owner, that the Contract Times for the Work described herein are reasonable time, taking into consideration the average climatic and economic conditions, and other factors prevailing in the locality of the Work.
- D. If the Contractor shall fail to perform the Work required within the Contract Times, or extended Contract Times if authorized by Change Order, then the Contractor shall pay to the Owner the full amount of liquidated damages specified in the Contract Documents for each calendar day that the Contractor shall be in default after the Contract Times stipulated in the Contract Documents.

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

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports ~~known to Owner~~ of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by the Engineer in preparing the Contract Documents; -and
 - 2. those drawings ~~known to Owner~~ of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities that have been utilized by the Engineer in preparing the Contract Documents).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, ~~will may shall~~ be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

- a. Contractor knew or should have known of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs ~~or arbitration or other dispute resolution costs~~) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; ~~and~~
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.;
 3. The Contractor has the right to rely on the Contract Documents with respect to the presence of utilities and has the duty to investigate the location of the utilities; and
 4. Relocation and or protection of unknown utilities and or facilities discovered during construction shall be grounds for additional compensation should their discovery introduce cost to the Project.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Field Order, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment ~~shall~~may be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

DC. The dimensions and descriptions given on the Drawings for adjacent work by others, if any, (including any existing facilities or utilities previously constructed for Owner) are based on the design drawings and not as-built drawings. Prior to commencing the Work, the Contractor shall verify all as-built conditions and information whenever existing facilities or utilities may impact the Work. Failure of Contractor to so verify all as-built conditions prior to commencing the Work shall bar Contractor from later seeking additional compensation for conflicts with existing facilities or utilities.

ED. Prior to the construction or installation of any proposed facility or pipeline, the Contractor shall expose all existing utilities true to their vertical and horizontal location, within the vicinity of the Work. In order to avoid conflicts between existing and proposed facilities or utilities, the Contractor shall either relocate the existing or proposed utility on a temporary or permanent basis, or shall take whatever means necessary to protect the existing facilities or utilities during the installation of proposed utilities, as approved by the Engineer. No additional payment will be made for the relocation of existing utilities or for any work associated with the protection of existing facilities or utilities.

4.05 *Reference Points*

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

- B. Engineer may check the lines, elevations, and reference marks set by Contractor, and Contractor shall correct any errors disclosed by such check. Such a check shall not be considered as approval of Contractor's work and shall not relieve Contractor of the responsibility for accurate construction of the entire Work. Contractor shall furnish personnel to assist Engineer in checking lines and grades.
- C. The Contractor shall review the Contract Documents and the Project site to determine the presence and location of any property or rights-of-way monuments or markers, and to assess the possibility of disruption to these monuments or markers. It will be the Contractor's responsibility to flag, erect guard post, or provide offset references for the protection or the re-monumentation of these property or rights-of-way monuments or markers. In the event these monuments or markers are covered over or disturbed, it will be the Contractor's responsibility to employ a surveyor licensed in the state of that the Project is located to re-establish those monuments or markers of property or rights-of-way, which were present prior to Work on the Project.
- D. It shall be the Contractor's responsibility to verify all reference points shown on the Contract Documents prior to beginning Work on the site. This verification shall be conducted by professionally qualified personnel in a manner which will verify the accuracy of the information shown in the Contract Documents. On projects which involve the connection to, or additions to existing structures, the elevations of these existing structures shall also be verified. Any findings which differ from those shown on the Contract Documents shall be submitted in writing to the Engineer for resolution.
- E. Additional surveys necessary for the construction staking shall be performed by the Contractor, the cost of which shall be incorporated into the appropriate items of Work. On projects in which payment is classified by depth of cut, the construction staking shall be performed in a manner that will allow for the determination of cut classification.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may issue a Work Change Directive or Change Order as appropriate regarding said condition. ~~order the portion of the Work that is in the area affected by such condition to be deleted from the Work.~~ If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. ~~Deleted. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- G. Deleted. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and

~~against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to 110% of the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. At all times, the liability of the surety for each bond will equal the combined value of executed Work Authorizations. These bonds shall remain in effect until one year after the date when final payment ~~becomes due~~ is made by the Owner or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as ~~may be provided below in the Supplementary Conditions.~~
1. Surety shall be in good standing with the agency having jurisdiction over sureties and insurance companies for the state in which the Project is located.
 2. Surety and Insurers must have an A.M. Best Financial Strength Rating of A or higher and a Financial Size Category .of X or higher.
 3. The surety shall have an underwriting limitation in Circular 570 in excess of the Contract Amount.
 4. No surety will be accepted who is now in default or delinquent on any bond.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee ~~identified in the Supplementary Conditions~~, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. ~~Deleted. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.~~
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- F. Copies of endorsements showing that each additional insured identified herein have been added to the policies as an additional insured shall be attached to each of the certificates.
- G. Each insurance certificate for all coverages other than Worker's Compensation Insurance must show that a waiver of rights of recovery against any of the insured or the additional insured is in effect.

H. Certificate for Worker's Compensation and Employer's Liability coverage must indicate inclusion or exclusion for any proprietor, partner, executive officer or member.

5.04 *Contractor's Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by ~~reasonably~~ available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of real or tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
7. claims for Professional Liability (Errors and Omissions) where required. Such insurance is required for all professional services and design build. Also required for all construction where interpretation of drawings, plans and specifications is included in the scope of work or required to complete the scope of work.
8. claims for Unmanned Aerial Vehicle damages if used on Project.
9. claims arising from damage to owner's operations, computer systems or data as a result of malware introduced by Contractor.
- ~~10. claims for Railroad insurance.~~

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

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary

exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

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

C. The limits of liability for the insurance required by paragraph 5.04.B.2 of the General Conditions shall provide coverage for not less than the following amounts specified below or greater where required by Laws and Regulations:

1. Worker's compensation, disability benefits and other similar employee benefit acts, and damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees as provided in Paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

a. Workers Compensation:	Statutory limits
b. Employer's Liability, Each Accident:	\$1,000,000
c. Employer's Liability, Each Employee—Disease	\$1,000,000
d. Employer's Liability, Disease - Policy Aggregate—Disease	\$1,000,000

2. Contractor's General Liability Insurance under paragraphs 5.04.A.3 through 5.04.A.5 of the General Conditions shall provide the following minimum limits and conditions:

- a. Each Occurrence: \$1,000,000.
 - b. Damage to Rented Premises (each occurrence) \$100,000.
 - c. Medical Expenses (any one person) \$5,000.
 - d. Personal and Advertising Injury: \$1,000,000.
 - e. General Aggregate: \$2,000,000.
 - f. Products-Completed Operations Aggregate: \$2,000,000.
 - g. Explosion, collapse, and underground coverage shall be included with such indicated on the insurance certificate under General Liability.
 - h. The general aggregate policy limits must be designated to the Project.
 - i. Contractual Liability coverage, as required under Paragraph 5.04.B.3 must be indicated on the insurance certificate under General Liability.
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions, providing for Combined Single Limit (each accident) for all owned, hired, and non-owned vehicles: \$1,000,000.
4. Provide Excess Liability or Umbrella Liability insurance (over primary) providing protection for at least the hazards insured under the primary liability policies with the following limits:
- a. General Aggregate: \$5,000,000
 - b. Each Occurrence: \$5,000,000
5. Professional Liability Insurance: \$3,000,000
6. Unmanned Aerial Vehicle: \$5,000,000

5.05 Deleted. Owner's Liability Insurance

~~A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.~~

5.06 *Property Insurance*

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

~~be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

- ~~1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;~~
- ~~2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake~~earth movement, flood, equipment breakdown~~, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.~~
- ~~3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);~~
- ~~4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;~~
- ~~5. allow for partial utilization of the Work by Owner;~~
- ~~6. include testing and startup; and~~
- ~~7. be maintained in effect until Substantial Completion of entire Project final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.~~

~~B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.~~

~~C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.~~

~~D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors,~~

or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

5.07 Waiver of Rights

A. ~~Owner and Contractor intend that all policies purchased in accordance with Paragraphs 5.04 and 5.06 by Contractor will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner/Contractor as trustee or otherwise payable under any policy so issued.~~

B. Deleted.

C. Deleted.

~~B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:~~

- ~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
- ~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to~~

~~Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.~~

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner chooses finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated

thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, provide quality control, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Any method of work suggested by the Owner or Engineer, but not specified, shall be used at the risk and responsibility of the Contractor; and the Owner and Engineer will assume no responsibility therefore. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent ~~resident~~ superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. Contractor shall also designate, in writing, a representative, hereinafter referred to as Project Manager, assigned to the Project on a full-time basis during execution of the Work on a full-time basis during execution of the Work who shall have the authority to act on behalf of Contractor, including executing the orders or directions of the Engineer without delay. This Superintendent and/or Project Manager shall have full authority to promptly supply products, tools, plant equipment, and labor as may be required to diligently prosecute the Work. All communications given to or received from the Superintendent and/or the Project Manager shall be binding on Contractor.
- C. If at any time during the Project the Superintendent ~~or~~ and/or Project Manager leaves the Project site while Work is in progress, Engineer shall be notified and provided with the name of Contractor’s representative having responsible charge.
- D. Contractor shall also designate the person responsible for Contractor’s quality control while Work is in progress. Engineer shall be notified in writing prior to any change in quality control representative assignment.
- E. Prior to the Commencement of the Contract Time, Contractor shall furnish to the Owner and Engineer the names, resumes, 24-hour contact information and other relevant information associated with the Project Manager and the Superintendent that are to be assigned to this project. The Project Manager and Superintendent must be acceptable to the Owner and Engineer.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, skilled, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Contractor shall, upon demand from the Engineer, immediately remove any manager, superintendent, foreman or workman whom the Engineer or Owner may consider incompetent or undesirable.

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.
- C. Regular working hours may be Monday through Friday, excluding holidays, occurring between the hours of 7:00 AM and 7:00 PM, unless restricted otherwise. Contractor shall establish regular scheduled work times, e.g., four 10-hour days, five 8-hour days, or five 10-hour days within the hours and days allowed above. Approval for specific work outside regular scheduled work times shall be requested no less than 48 hours prior to the requested work period. Contractor shall request approval of changes in regular scheduled work times no less than one week prior to the desired change. Occasional unscheduled overtime on weekdays may be permitted provided reasonable notice is given to Engineer. Night work will not be established as a regular procedure, excluding emergencies, except with written permission. Such permission, if granted, shall be upon such terms and conditions deemed appropriate in the Engineer's sole discretion.
- ~~D. Contractor shall pay all extra costs incurred by the Owner associated with work, outside of normal working hours, including additional support services, inspection services, testing services, utilities or other applicable costs. The cost associated with the Owner's inspection overtime will be the amounts as provided in the Supplementary Conditions per hour per individual, depending upon individuals assigned to the Project, the type of work being inspected, and the date of the invoice; i.e., allowing for salary escalation. Contractor will not be responsible for extra costs associated with inspection overtime for work in excess of 40 hours per week when such overtime work is explicitly required by the Contract Documents. No overtime pay shall be charged to the Contractor for work performed within 10-hour days occurring Monday through Friday, excluding holidays. Additionally, no overtime pay will be charged to the Contractor for work performed at night or on weekends, when, due to operational conditions of the Owner's facilities, the work must be performed during these non-standard work hours.~~
- DE. Except in the case of emergencies or other unusual circumstances, no work shall be permitted on the project on Sunday.
- EF. The Engineer will determine to what extent extraordinary onsite personnel work is required during Contractor's overtime work or working hours outside regular scheduled work hours.
- G. During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely thereby. No portion of the work shall be constructed under conditions which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, quality control, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified ~~or, and if not specified,~~ shall be of good quality, and new and unused, except as otherwise provided in the

Contract Documents and shall be installed in an undamaged condition. All products provided on this Project shall be products currently manufactured by the manufacturer, i.e., products shall not be discontinued or out-of-date products nor shall they be of the last production run of the product. Contractor shall incorporate the previous sentence in any contract or agreement between Contractor and subcontractor or supplier supplying products provided on this Project. All special warranties and guarantees required by the Specifications Contract Documents shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. Without limiting the responsibility or liability of the Contractor pursuant to this agreement, all warranties given by manufacturers on materials or equipment incorporated in the work are hereby assigned by the Contractor to the Owner. Such assignment shall be effective upon completion of Contractor's warranty period. If requested, the Contractor shall execute formal assignments of said manufacturer's warranties to the Owner. All such warranties shall be directly enforceable by the Owner. Such assignment shall in no way affect the Contractor's responsibilities and duties during the warranty period.
- E. Wherever a stock size of manufactured item or piece of equipment is specified by its nominal size, it shall be the responsibility of the Contractor to determine the actual space requirements for setting and for entrance to the setting space and to make all necessary allowances and adjustments therefor in his work without additional cost to the Owner.
- F. Equipment and Construction Plant. All equipment and construction plant shall be suitable to produce the quality of work and materials required for the satisfactory completion of the work within the Contract Time. and shall be satisfactory to the Engineer. The Contractor shall provide adequate and suitable equipment and construction plant to meet the requirements of the work as specified in these Contract Documents. The Contractor shall remove unsuitable equipment from the site of the work when ordered to do so by the Engineer. The Contractor shall obtain written permission from the Owner prior to constructing temporary buildings or other structures on land owned or leased by the Owner. If permission is granted, said buildings or other structures shall comply with all applicable regulations regarding their construction and maintenance and shall be satisfactory to the Owner.

6.04 *Progress Schedule*

- A. Contractor shall provide all resources, labor, materials, equipment, services, etc. necessary to adhere to the Progress Schedule established in accordance with Paragraph 2.07 and the General Requirements as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in and the General Requirements) an updated the Progress Schedule that will not result in changing the Contract Times and an updated Schedule of Submittals with each partial payment request, but no less than monthly. Contractor's failure to provide acceptable updated Progress Schedule and Schedule of Submittals will delay processing of the pay request until receipt of the acceptable updated Progress Schedule and/or an updated Schedule of Submittals. Such adjustments will updates and adjustments shall comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.
 3. Number of anticipated days associated with weather conditions, as defined in the General Requirements, shall be included on the critical path of Project Schedule.
- B. The Contractor shall implement the detailed schedule of activities to the fullest extent possible between Project Coordination Meetings.
- C. The Contractor shall prepare its daily report by 10:00 a.m. of the day following the report date. This daily report will contain, as a minimum, the weather conditions; number of workers by craft, including supervision and management personnel on site; active and inactive equipment on site; work accomplished by schedule activity item; problems; and visitors to the jobsite.
- D. If a current activity or series of activities on the overall project schedule is behind schedule and if the late status is not due to an excusable delay for which a time extension would be forthcoming, the Contractor shall attempt to reschedule the activity to be consistent with the overall Project schedule so as not to delay any of the Contract milestones. The Contractor agrees that:
1. The Contractor shall attempt to expedite the activity completion so as to have it agree with the overall progress schedule. Such measures as the Contractor may choose shall be made explicit during the Project Coordination Meeting.
 2. If, within two weeks of identification of such behind-schedule activity, the Contractor is not successful in restoring the activity to an on schedule status, the Contractor shall:
 - a. Carry out the activity with the scheduled crew on an overtime basis until the activity is complete or back on schedule.
 - b. Increase the crew size or add shifts so the activity can be completed as scheduled.
 - c. Commit to overtime or increased crew sizes for subsequent activities, or some combination of the above as deemed suitable by the Engineer.
 3. These actions shall be taken at no increase in the Contract amount.
- E. The Contractor shall maintain a current copy of all construction schedules on prominent display in the Contractor's field office at the Project site.
- F. The Contractor shall cooperate with the Owner and Engineer in all aspects of the Project scheduling system. Failure to implement the Project scheduling system or to provide specified schedules, diagrams and reports, or to implement actions to re-establish progress consistent with the overall progress schedule may be causes for withholding of payment.
- G. If the Progress Schedule reflects a completion date prior to the completion date established by the Agreement, this shall afford no basis to claim for delay should Contractor not complete the Work prior to the projected completion date. Instead, all "float" between the completion date in Contractor's schedule and the completion date established in the Agreement shall belong to and is available to the Contractor and the Owner.

6.05 *Substitutes and "Or-Equals"*

- A. ~~See General Requirements.~~—Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. ~~“Or Equal” Items:~~ If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. ~~in the exercise of reasonable judgment Engineer determines that:~~
 - 1) ~~it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;~~
 - 2) ~~it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and~~
 - 3) ~~it has a proven record of performance and availability of responsive service.~~
 - b. ~~Contractor certifies that, if approved and incorporated into the Work:~~
 - 1) ~~there will be no increase in cost to the Owner or increase in Contract Times; and~~
 - 2) ~~it will conform substantially to the detailed requirements of the item named in the Contract Documents.~~
 2. ~~Substitute Items:~~
 - a. ~~If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.~~
 - b. ~~Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.~~
 - c. ~~The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.~~
 - d. ~~Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:~~
 - 1) ~~shall certify that the proposed substitute item will:~~

- a) ~~perform adequately the functions and achieve the results called for by the general design,~~
- b) ~~be similar in substance to that specified, and~~
- c) ~~be suited to the same use as that specified;~~
- 2) ~~will state:~~
 - a) ~~the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,~~
 - b) ~~whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and~~
 - c) ~~whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;~~
- 3) ~~will identify:~~
 - a) ~~all variations of the proposed substitute item from that specified, and~~
 - b) ~~available engineering, sales, maintenance, repair, and replacement services; and~~
- 4) ~~shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.~~
- B. ~~*Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.~~
- C. ~~*Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.~~
- D. ~~*Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.~~
- E. ~~*Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for~~

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

~~F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.~~

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Acceptance of any Subcontractor, other person or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. Contractor shall not be required to employ any Subcontractor, ~~Supplier,~~ or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, ~~and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued.~~ No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the

Work to be performed by any specific trade. Such arrangement shall not operate to make the Engineer or the Owner an arbitrator to establish subcontract limits between Contractor and Subcontractor.

- G. All Work performed for Contractor by a Subcontractor or Supplier ~~will~~ shall be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. ~~Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.~~
- H. Owner or Engineer may furnish to any Subcontractor, Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to Contractor in accordance with Contractor's Applications for Payment.
- I. Specialty Subcontractors: Contractor shall utilize the services of Specialty Subcontractors on those parts of the Work which is declared as specialty work in Specifications and which, under normal contracting practices, is best performed by Specialty Subcontractors, as required by the Engineer in Engineer's sole discretion, at no additional cost to the Owner. If ordered by the Engineer prior to execution of a Work Authorization Contractor desires to self-perform specialty work, Contractor shall submit a request to the Owner, accompanied by evidence that Contractor's own organization has successfully performed the type of work in question, is presently competent to perform the type of work, and the performance of the work by Specialty Subcontractors will result in materially increased costs or inordinate delays.
- J. ~~The Contractor shall perform a minimum of 20 percent of the onsite labor with its own employees.~~

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or, copyrights, trademarks or other intellectual property held by others. If a particular invention, design, process, product, software or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. or Engineer in the Contract Documents. Furthermore, the Contractor represents and warrants that all licenses, fees and / or royalties for any invention, design, process, product, software or device used in this Project have been paid and the Contractor has the right to use. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge

of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

~~B. Deleted. 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.~~

B. Deleted.

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 or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights, trademark or other intellectual property 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. These provisions shall survive the expiration, termination or cancellation of this agreement.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction, permits and licenses temporary permits and licenses, necessary and incidental to the due and lawful prosecution of the work, including all permits on any part of the Work as required by law in connection with the Work. Owner shall will assist Contractor, when required by the permitting agency necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make

certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times, or both. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.
- D. It is understood and agreed that the Contractor shall be familiar with and shall observe and comply with, all Federal, State, County, and local laws, codes, ordinances, regulations, orders, and decrees, including air and water pollution and noise abatement regulations, existing, or enacted subsequent to the execution of the Contract, that in any manner affect those engaged or employed in the work, or the materials or equipment used in the work, or which in any way affect the conduct of the work. The Contractor shall strictly observe all applicable laws and regulations as to public safety, health and sanitation. No pleas of misunderstanding or ignorance on the part of the Contractor will in any way serve to modify or mitigate the provisions of these Contract Documents. The Contractor and his Surety shall indemnify and save harmless the Owner and the Engineer and all their its officers, agents, and servants against any claim or liability arising from, or based on to the extent caused by the Contractor's violation of, any such law, code, ordinance, regulation, order or decree, whether by himself, his agents or his employees.
- F. Where professional engineering and/or architectural services are required in connection with any of the components required by the Contract, all Bidders and component suppliers must make certain that there is full compliance with all applicable laws of the state in which the Project is located and any other state governing professional engineering and/or architecture. The Owner and Engineer do not warrant that any entity listed as an acceptable manufacturer is or will be in compliance with such laws.
- G. Any fines levied against the Owner for failure of Contractor to properly maintain required NPDES erosion and sediment control measures or any other related requirements will be deducted as set-offs from payments due Contractor.
- H. Contractor shall perform those duties as they relate to O.C.G.A. Section 36-91-92 and O.C.G.A. Section 44-14-361.5, including filing the Notice of Commencement. Contractor shall provide Owner and Engineer with proof of having performed these duties before any progress payments or final payment shall be considered due and payable to the Contractor.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. The Contractor shall provide a written tabulation, plus other documentation as may be required, of all taxes, including sales tax, paid by the Contractor to assist the Owner in obtaining sales and/or use tax refunds for eligible machinery and equipment used to condition air or water as provided for in O.C.G.A. Section 48-8-3.2(e)(8). Such written tabulation shall be included with each partial payment request. Additionally, the tabulation shall be documented with copies of invoices indicating the amount of tax paid, with all blanks completed on the invoice, and with a description of the function of the item included in the tabulation. All taxes will be paid by the Contractor. All refunds will accrue to the Owner.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution ~~or arbitration or other dispute resolution~~ costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

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

6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all ~~necessary~~ precautions for the safety of, and shall provide the ~~necessary~~ protection to prevent pollution of or damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. The property, improvements or facilities at the site shall be replaced or restored to a condition as good as when Contractor entered upon the Site. In case of failure on the part of Contractor to restore such property, or make good such damages or injury, the Owner may, after 48 hours written notice, or sooner in the case of an emergency, proceed to repair, rebuild, or otherwise

restore such property, improvements or facilities as may be deemed necessary. The cost thereof will be deducted from any monies due or which may become due Contractor under this Contract.

H. Reasonable care shall be taken during construction to avoid damage to vegetation. Ornamental shrubbery and tree branches shall be tied back, where appropriate, to minimize damage. Trees which receive damage to branches shall be trimmed of those branches to improve the appearance of the tree. Tree trunks receiving damage from equipment shall be treated with a tree dressing.

I. The Contractor shall give due notice to any controlling person, department, or public service company, prior to adjusting items to grade and shall be held strictly liable to the Owner if any such items are disturbed, damaged or covered up during the course of the work.

J. Fire hydrants on or adjacent to the work shall be kept accessible to the fire-fighting apparatus at all times, and no material or obstruction shall be placed within 10 feet of any hydrant. Adjacent premises must be given access, as far as practicable, and obstruction of sewer inlets, gutters and ditches will not be permitted.

K. Public Safety and Convenience

1. The Contractor shall conduct his operations in a manner that will offer the least possible obstruction and inconvenience to the public and he shall not have under construction an amount of work greater than he can prosecute properly with due regard to the rights of the public.

2. Construction operations shall be conducted in a manner that will cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses, buildings or other facilities in the vicinity of the work shall be maintained and temporary access facilities for public roadways shall be provided and maintained in satisfactory condition.

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

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

B. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards, including sufficient lights and danger signals on or near the work; it shall erect suitable railings, barricades, covers, or other protective devices about unfinished work, open trenches, holes, embankments or other hazards and obstructions; where hazards to workmen or the public exist. The Contractor shall provide, at all times, all necessary watchmen on the project, for the safety of employees, delivery personnel, and the general public, and to diligently guard and protect all work and materials, including Owner-furnished equipment. Construction equipment shall be suitably night-marked and lighted as necessary for safety considerations.

6.16 *Emergencies*

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

6.17 *Shop Drawings, ~~and Samples~~ and Other Submittals*

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

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings ~~will~~ shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

- B. Where a ~~Shop Drawing or Sample~~ any Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each Shop Drawing and Sample submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will return as incomplete or will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval or disapproval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval or disapproval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation ~~notation~~ Field Order thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.
4. Review by the Owner or Engineer of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefor, and such review shall not be considered as an assumption of any risk or liability by the Owner or Engineer, or any officer, agent, or employee thereof. The Contractor shall have no claim on account of the failure or inefficiency of any plan or method so reviewed.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and

approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

F. Excessive Submittal Resubmission: Engineer will record time required by Engineer for excessive Submittal review occasioned by Contractor's resubmission, in excess of two resubmissions of any required Submittal, caused by unverified, unchecked or unreviewed, incomplete, inaccurate or erroneous, or nonconforming Submittals. Upon receipt of Engineer's accounting of time and costs, Contractor will reimburse Owner for the charges of Engineer's review for excessive resubmissions through set-offs from the recommended Owner payments to Contractor as established in Paragraph 14.02.D. of these General Conditions.

G. In the event that Contractor provided a submittal for a previously approved item, whether such is as a substitution or in addition to the previously approved item, Contractor shall reimburse Owner for Engineer's charges for such time as may be required to perform all reviews of the substitute item, unless the change is specifically requested by the Owner.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a ~~Shop Drawing or Sample s~~Submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification and Liability

- A. ~~It is understood and agreed that the Contractor shall be deemed and considered an independent contractor in respect to the work covered by these Contract Documents, and shall assume all risks and responsibility for casualties of every description in connection with the work, except that he shall not be held liable or responsible for delays or damage to work caused by acts of God, acts of public enemy, quarantine restrictions, general strikes throughout the trade, or freight embargoes not caused or participated in by the Contractor; provided however, the Contractor has provided notes of the purported cause for such delay or damage and what reasonable alternatives Contractor might exercise to minimize such delay or damages. Such notes shall be provided to Owner within 30 days of the purported cause.. The Contractor shall have charge and control of the entire work until completion and final acceptance of the work by the Owner. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, and Engineer, and the officers its officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them employees 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 or arbitration or other dispute resolution costs) to the extent caused by the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable., regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity. Furthermore, Contractor agrees to defend, indemnify, and hold HCWA and all of its officers, agents, employees, appointed officials and elected officials whole and harmless against any and all claims for damages, costs (including attorney's fees), and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, or omission of the Contractor, or any agent, servant, or employee of the Contractor in the execution of the performance of this agreement, without regard to whether such persons are under the direction of HCWA agents or employees.~~
- B. In any and all claims against Owner ~~or Engineer~~ or any of their ~~its~~ officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor ~~under Paragraph 6.20.A~~ shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors ~~arising out of:~~

- ~~1. the negligent preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or~~
- ~~2. negligently giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

D. Contractor, Subcontractors, Suppliers and others on the Project, or their sureties, shall maintain no direct action against the Engineer, their officers, employees, affiliated corporations, consultants, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the Owner will be the beneficiary of any undertaking by the Engineer.

E. Defense of Suits: In case any action in court is brought against the Owner or the Engineer, or any officer, agent or employee of the Owner any of them, for the failure, omission, or neglect of the Contractor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material-men, or suppliers, the Contractor shall indemnify, defend and save harmless the Owner and its the Engineer and their officers, agents, members, and employees, from all losses, damages, costs, expenses (including attorneys' fees), judgments, or decrees to the extent caused by acts or omissions of the Contractor. arising out of such action.

F. Waiver of Claims for Consequential Damages

1. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

- (a) damages incurred by the Owner for rental expenses, for losses of use, income, revenue, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract. Nothing contained in this mutual waiver shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract. Notwithstanding the foregoing, there shall be no waiver by either the Owner or the Contractor of any consequential damages arising out of or relating to the Contract to the extent that such consequential damages are covered by any Project-related insurance policies, subject to the insurance limits set forth in the Contract.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods,

techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

6.22 Project Coordination Meetings

- A. The Contractor shall participate in Project Coordination Meetings to be held on the site monthly, or more often if conditions warrant, to establish the current state of completion and revise the schedule as necessary. The Project Coordination Meeting will be conducted by the Owner and/or the Engineer.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times or both that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to

properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

D. Any separate contractors, prior to commencing work at the Project, shall provide Contractor with a current certificate of insurance showing industry standard coverages and naming Contractor as an additional insured. Furthermore, any separate contractor(s) shall agree to abide by Contractor's Project safety requirements prior to performing any work at the Project site.

7.02 Coordination

A. If Owner ~~intends to contract~~ with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination with other contractors.

7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

7.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any separate contractor at the site, or should any claim arising out of Contractor's performance of the work at the site be made by any separate contractor against Contractor, Owner, Engineer, or any other person, Contractor

shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Engineer, and the officers, directors, and employees of Owner, agents, and other consultants of each and any of them harmless from and against all claims, costs, losses and damages, (including, but not limited to, reasonable attorneys' all fees arising and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of or resulting from any action, legal or equitable, brought by any separate contractor against Owner, Engineer, or the officers, directors, employees of Owner, agents, and other consultants of each and any of them to the extent based on a claim arising out of Contractor's negligent performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the officers, directors, employees, agents, and other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from Owner, Engineer, or the officers, directors, employees, agents, or other consultants of each and any of them on account of any such damage or claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable hereto, Contractor may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, and/or Engineer and the officers, directors, employees, agents, or other consultants of each and any of them for any delay, disruption, interference or hindrance caused by any separate contractor. This Paragraph does not prevent recovery from Owner, Engineer, and/or Designer for activities that are their respective responsibilities.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

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

8.02 Replacement of Engineer

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

8.03 Furnish Data

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

B. The Contractor shall be entitled to rely on the accuracy of the Contract Documents and any other information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work.

8.04 Pay When Due

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

- A. Owner's ~~shall not have any~~ responsibilities, ~~if any,~~ with respect to purchasing and maintaining liability and property insurance ~~are set forth in Article 5.~~

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer or Owner will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work, but will not be on-site at all hours the Work is in progress. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions following Paragraphs B and C, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not an Owner's employee or Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.
- B. The Resident Project Representative (RPR) may be Engineer's or Owner's employee or agent at the Site, will act as directed by and under the supervision of Engineer or Owner, and will confer with Engineer or Owner regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be only through or with the full knowledge and approval of Contractor. The RPR shall:
 - 1. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer and Owner concerning acceptability.

2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
3. Liaison:
 - a. Serve as Engineer's or Owner's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
4. Interpretation of Contract Documents: Report to Engineer or Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer or Owner.
5. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer or Owner of availability of Samples for examination.
6. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer or Owner. Transmit to Contractor in writing decisions as issued by Engineer.
7. Review of Work and Rejection of Defective Work:
 - a. Conduct on-site observations of Contractor's work in progress to assist Engineer or Owner in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer or Owner whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer or Owner of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
8. Inspections, Tests, and System Startups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

b. Observe, record, and report to Engineer or Owner appropriate details relative to the test procedures and systems start-ups.

9. Records:

a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

b. Maintain records for use in preparing Project documentation.

10. Reports:

a. Furnish to Engineer or Owner periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to the Engineer or Owner proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Immediately notify Engineer or Owner of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.

11. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer or Owner, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

13. Completion:

a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.
9. Make any payments of any kind to Contractor.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will have authority to determine the actual quantities and classifications of Unit Price Work performed by Contractor. If Engineer exercises such authority, Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

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

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the

safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents, except that Owner shall determine whether bonds, certificates of insurance and release of liens comply with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.
- F. Notwithstanding the foregoing, the Engineer does not have authority, either actual, apparent or implied, to sign contracts on behalf of the Owner nor does he have authority to bind the Owner to any new obligations. Contractor may take this statement as notice of such lack of authority on part of Engineer. Only the Owner, through written signature by authorized person and acting with consent of the Owner, may bind the Owner to contractual terms, contractual obligations, or other obligations.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
 - 1. Owner may, in anticipation of possibly ordering an addition, deletion or revision to the Work, request Contractor to prepare a proposal of cost and times to perform Owner's contemplated changes in the Work. Contractor's written proposal shall be transmitted to the Engineer promptly, but not later than ~~fourteen~~ thirty days after Contractor's receipt of Owner's written request and shall remain a firm offer for a period not less than sixty days after receipt by Engineer.

2. Contractor is not authorized to proceed on an Owner contemplated change in the Work prior to Contractor's receipt of a Change Order (or Work Change Directive) incorporating such change into the Work.
3. Owner's request for proposal or Contractor's failure to submit such proposal within the required time period will not justify a claim for an adjustment in Contract Price or Contract Time (or Milestones).
4. The Owner shall not be liable to the Contractor for any costs associated with the preparation of proposal associated with the Owner's contemplated changes in the Work.

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

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

B. In signing a Change Order, the Owner and Contractor acknowledge and agree that:

1. The stipulated compensation (Contract Price or Contract Time, or both) set forth in the Change Order includes payment for:

a. the Cost of the Work covered by the Change Order,

- b. Contractor's fee for overhead and profit,
 - c. interruption of Progress Schedules,
 - d. delay and impact, including cumulative impact, on other work under the Contract Documents, and
 - e. deleted;
- 2. the Change Order constitutes full mutual accord and satisfaction for the change to the Work;
 - 3. No reservation of rights to pursue subsequent claims on the Change Order will be made by either party; and
 - 4. No subsequent claim or amendment of the Contract Documents will arise out of or as a result of the Change Order.

10.04 *Notification to Surety*

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

10.05 *Claims and Disputes*

- A. *Engineer's Decision Required:* All Claims and disputes, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than ~~30~~1021 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with written supporting data shall be delivered to the Engineer and the other party to the Contract within ~~60~~2030 days (and monthly thereafter for continuing events) after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.
- G. No civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar day's written notice to HCWA of the claim and the intent to initiate a civil action.

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

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such Cost of the Work costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. ~~Payroll costs~~ Wages for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications and rates agreed upon by Owner and Contractor, ~~and set forth in the Contractor's GMP Proposal.~~ Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. ~~Payroll costs~~ Wages for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. ~~Payroll costs~~ Wages shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, ~~bonuses~~, sick leave, vacation and holiday pay

applicable thereto. The rates established for construction workers are subject to labor burden, which will be charged at a rate equal to the amount set forth in the Contractor's GMP Proposal. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner. These rates have been established by the mutual agreement of Contractor and Owner and will apply throughout the duration of the Project, provided that Contractor will be allowed to increase the rates annually each January 1st by five percent (5%).

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained. Costs of materials described in this paragraph in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be provided to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Contractor or returned to the supplier; amounts realized, if any, from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01. Subcontracts may include external companies and internal business units as described in the Contractor's GMP Proposal.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, dismantling and removal of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

1. Full rental cost for rented, leased, and/or owned equipment shall not exceed one hundred percent (100%) of the standard rental rate paid at the place of the Project, the rates listed in the Rental Rate Blue Book published by Equipment Watch, a unit of Penton Media, Inc., as adjusted to the regional area of the Project or other standard mutually agreed upon by the Owner and Contractor. The most recent published edition in effect at the commencement of the actual equipment use shall be used.
2. Rates shall apply to equipment in good working condition. Equipment not in good condition, or larger than required, may be rejected by Engineer or accepted at reduced rates.
3. Equipment in Use: Actual equipment use time documented by the Engineer shall be the basis that the equipment was on and utilized at the Project site. In addition to the leasing rate above, equipment operational costs shall be paid at the estimated operating cost and payment category (and the table below), and associated rate set forth in the Blue Book if not already included in the lease rate.

The hours of operation shall be based upon actual equipment usage to the nearest full hour, as recorded by the Engineer.

<u>Actual Usage</u>	<u>Blue Book Payment Category</u>
<u>Less than 8 hours</u>	<u>Hourly Rate</u>
<u>8 or more hours but less than 7 days</u>	<u>Daily Rate</u>
<u>7 or more days but less than 30 days</u>	<u>Weekly Rate</u>
<u>30 days or more</u>	<u>Monthly Rate</u>

4. Equipment when idle (Standby): Idle or standby equipment is equipment on-site or in transit to and from the Work site and necessary to perform the Work under the modification but not in actual use. Idle equipment time, as documented by the Engineer, shall be paid at the leasing rate determined in 11.01.A.5.c., excluding operational costs.
 5. Where a breakdown occurs on any piece of equipment, payment shall cease for that equipment and any other equipment idled by the breakdown. If any part of the Work is shutdown by the Owner, standby time will be paid during non-operating hours if diversion of equipment to other Work is not practicable. Engineer reserves the right to cease standby time payment when an extended shutdown is anticipated.
- 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 any of the Work that has been completed and accepted by the Owner, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D.), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee. If, however, any such loss or damage to the Work that has been accepted by Owner requires reconstruction and Contractor is placed in charge thereof, Contractor shall be paid for services, a fee proportionate to that stated in Paragraph 12.01.cG.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as ~~telegrams~~, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain. The Guaranteed Maximum Price shall include, and Contractor will charge, a fixed rate equal to 4.10% of the Contract Price to cover Contractor's costs for all liability insurance, umbrella insurance, risk management, and Corporate Safety Programs. Bond premium and Builder's Risk or Difference in Conditions policies shall be charged at actual cost.
- j. Costs of removal of debris from the site.
- k. That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.
- l. Company owned trucks, trailers and equipment while directly engaged in performance of Work for this Project.
- m. Deductibles and self-insured retention amounts associated with insurance are considered costs of the Work.
- n. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.
- o. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph u below.
- p. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or the Guaranteed

Maximum Price and provided that such royalties, fees and costs are not excluded by provisions of the Contract Documents.

- q. Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld
- r. Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel, for personnel below the level of Project Superintendent.
- s. Costs incurred by the Contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons or property.
- t. Costs incurred by the Contractor in repairing or correcting damaged or nonconforming Work executed by the Contractor or its Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure of the Contractor or the Contractor's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel, to perform in accordance with the Contract Documents or of the failure of the Contractor's personnel to supervise adequately the Work of the Contractor's Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, its Subcontractors or its suppliers.
- u. Other costs incurred by the Contractor in performance of the Work if and to the extent approved in advance in writing by the Owner.
- v. Rental charges for temporary facilities, including site office trailer, office equipment, temporary facilities, temporary utilities, dumpsters and toilets.
- w. Reproduction costs, progress photography cost, costs of stationery and similar supplies, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone services at the site and reasonable petty cash expenses of the site office.
- x. Mobilization and demobilization cost associated with Project.
- y. Project specific, on-site, safety inspection and related safety supplies and costs.
- z. Project specific, on site, quality control inspection and quality assurance and control costs.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in

Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due primarily to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
 6. With the exception of Contractor's cost to perform preconstruction services, costs incurred prior to date of Contract Agreement for Construction.
 7. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
 8. Rental costs of machinery and equipment, except as specifically provided in Paragraph 11.01.A.5.c.
 9. Liquidated damages assessed the Contractor by the Owner.
 10. Company owned, leased or rented trucks for personal use of those persons listed in Paragraph 11.01.B.1 above.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.
- E. Discounts, Rebates and Refunds: Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Owner or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. Amounts which accrue to the Owner in accordance with the provisions of this paragraph shall be credited to the Owner as a deduction from the Cost of the Work.

F. Accounting Records: The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract Documents; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

11.02 Allowances

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

B. Cash Allowances:

1. Contractor agrees that:

- a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance:

1. The final Contract Sum and Guaranteed Maximum Price will include a construction contingency equal to the amount set forth in the Contractor's GMP Proposal. This contingency shall be for Contractor's sole and exclusive use and shall be used to cover unexpected costs, including, but not limited to,

- a. sequencing changes,
- b. coordination issues,
- c. manpower adjustments,
- d. use of temporary measures to facilitate the Work,
- e. buyout or scope gap mitigation,
- f. Losses and damages, and related expenses, caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor or a Subcontractor in connection with the performance of the Work,
- g. Corrective work, regardless of fault if non-conformance is unintended,
- h. Overruns in Construction Support Costs,
- i. Builder's Risk deductibles,
- j. Verified excusable errors in estimates, and
- k. Non-compensable overtime and other acceleration costs.

2. This contingency is not intended to cover further design development, design errors or omissions, scope changes, weather events, unforeseen subsurface conditions, or other conditions that constitute a change in the Work or entitle Contractor to an increase in the Contract Price and Guaranteed Maximum Price in accordance with the Contract.

3. Contractor shall charge its actual costs plus applicable markups to this contingency, and any savings accruing in this contingency upon final completion of the Work will be returned to the Owner.

4. The Contractor, at its sole discretion, may partially release contingency funds for the Owner's use prior to the completion of the Project. Contingencies for the Project will be cumulative from each Work Authorization. Any savings realized in Contingencies at the end of the Project will be refunded one hundred percent to the Owner.

5. Contractor shall maintain a contingency log to track the individual instances of contingency usage. The log will be available to the Owner and will include the reason for contingency use and the amount.

~~1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.~~

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

~~D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:~~

~~1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and~~

~~2. there is no corresponding adjustment with respect to any other item of Work; and~~

~~3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.~~

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order or Work Authorization. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a ~~mutually agreed~~ lump sum value fixed by the Owner or by unit price values fixed by the Owner (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and ~~agreement to a lump sum is not reached~~ where the method under Paragraph 12.01.B.2. is not selected by the Owner, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

- C. ~~Contractor's Fee: As established in the Agreement.~~The Contractor's fee for overhead and profit shall be determined as follows:
1. ~~a mutually acceptable fixed fee; or~~
 2. ~~if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:~~
 - a. ~~for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be as Established in the Agreement; 15 percent;~~
 - b. ~~for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be as Established in the Agreement, five percent based on subcontractor's actual Cost of the Work;~~
 - c. ~~where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor; except the maximum total allowable cost to Owner shall be the Cost of the Work plus a maximum collective aggregate fee for Contractor and all tiered Subcontractors of 26.8 percent.~~
 - d. ~~no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.BA.4, 11.01.A.5, and 11.01.B;~~
 - e. ~~the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and~~
 - f. ~~when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.~~

12.02 Change of Contract Times

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

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times ~~shall will may~~ be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. and the Contract Price may be adjusted appropriately. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires,

floods, epidemics, ~~pandemics~~, abnormal weather conditions, quarantine restrictions, unusual delay in deliveries, unavoidable casualties, strikes, freight embargoes, acts of war (declared or not declared), or acts of God, actions of a government authority, or other causes not the fault of and beyond Contractor's control.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor ~~shall~~ may be entitled to an equitable adjustment in Contract Times, ~~but not Contract Price,~~ if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times and the Contract Price may be adjusted appropriately. ~~Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.~~
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution ~~or arbitration or other dispute resolution~~ costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- F. If the Progress Schedule reflects a completion date or milestone date prior to the completion date or milestone date established by the Agreement/Contract Documents, this shall afford no basis to claim for delay should Contractor not complete the Work prior to the projected completion date. Instead, all "float" between the completion date in Contractor's schedule and the completion date established in the Agreement shall belong to and is exclusively available to the Owner. Should a change order be executed with a revised completion date or milestone date, the Progress Schedule shall be revised to reflect the new completion date or milestone date.
- G. The Project Schedule is based on the assumption that Contractor shall be able to perform Work on the critical path five (5) days per Work Week. The Work Week shall be defined as Monday through Friday. The Work Week and the days assumed whereby work can be performed shall be reduced by any Contractor holidays, as defined in Contractor's employee handbook. Contractor has assumed in the schedule that the Work will not be performed during the Work Week due to Weather Events for the number of days set forth in Contractor's GMP Proposal.
- a. If Contractor cannot perform Work during the Work Week due to Weather Events in excess of the number of weather days specified above for the cumulative contract period, Contractor shall be entitled to a claim for an extension of the Contract Time and increase in the Contract Price and reconciled in accordance with Paragraph d below.

- b. Weather Events are those days when Contractor cannot proceed with Work on the critical path for more than four (4) hours in a day.
- c. All Weather Events shall be recorded by the onsite Project management team. A copy of Contractor's Weather Event record is available to Owner upon request.
- d. Notwithstanding any terms to the contrary herein, Contractor shall submit number of actual Weather Event delays versus the number of days set forth in Contractor's GMP Proposal in writing at the end of each month and Claims for Weather Event Delays will be reconciled over the total Contract period.

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

13.01 Notice of Defects

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

13.02 Access to Work

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

13.03 Tests and Inspections

- A. Contractor is responsible for the initial and subsequent inspections of Contractor's Work to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall establish an inspection program and a testing plan acceptable to the Engineer and shall maintain complete inspection and testing records available to Engineer.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all non-contractor inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such

public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- G. Tests required by Contract Documents to be performed by Contractor and that require test certificates to be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required testing laboratories or agencies shall meet the following applicable requirements:
 - 1. "Recommended Requirements for Independent Laboratory Qualification", published by the American Council of Independent Laboratories.
 - 2. Basic requirements of ASTM E329, "Standard of Recommended Practice for Inspection and Testing Agencies for Concrete and Steel as Used in Construction" as applicable.
 - 3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or ~~arbitration~~ or other dispute resolution or ~~arbitration~~ or other ~~dispute resolution~~ costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including

but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- B. If Owner stops Work under Paragraph 13.05.A. Contractor shall not be entitled to an extension of Contract Time or increase in Contract Price.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court ~~or arbitration or other dispute resolution~~ ~~or arbitration or other dispute resolution~~ costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- C. Contractor shall promptly segregate and remove rejected products from the Site.
- D. If rejected products or Work is not removed within 48 hours, as provided in Paragraph 13.05 above, the Owner will have the right and authority to stop the Work immediately and will have the right to arrange for the removal of said rejected products or Work at the cost and expense of the Contractor.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found

to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, and all to the satisfaction of the Owner:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court ~~or arbitration or other dispute resolution or arbitration or other dispute resolution~~ costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) ~~will~~shall be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.
- F. Repetitive malfunction of an equipment or product item shall be cause for replacement and an extension of the correction period for said equipment or product item to a date one year following acceptable replacement. A repetitive malfunction shall be defined as the third failure of an equipment or product item following original acceptance.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court ~~or arbitration or other dispute resolution or arbitration or other dispute resolution~~ costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be

entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount ~~will~~shall be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time, ~~as defined by the Engineer,~~ after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court ~~or arbitration or other dispute resolution~~ dispute resolution ~~or arbitration or other dispute resolution~~ costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A and as modified will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

- A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review five copies of an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. The Contractor's Fee for overhead and profit shall be payable on a monthly basis, prorated as a percentage of the Cost of the Work.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. Retainage:
 - a. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
 - b. No form of collateral in lieu of cash will be acceptable as retainage.
 - c. Amounts retained by the Contractor from payments due to suppliers and subcontractors (expressed as a percentage) shall not exceed that being retained by the Owner.
 - d. Release of Retainage shall occur relative to completion of each Work Authorization, not completion of the entire project.
4. Contractor, by submitting a payment application (for progress payments and for final payment) certifies the following, and the following provisions are incorporated by reference into each and every payment application submitted by Contractor:
 - a. Certifications, Affirmations and Warranties
 - (1) The current payment request represents the actual value of work performed through the indicated payment request period for which payment is due under the terms of the Contract Documents, including the Cost of the Work items listed in these General Conditions. Such work included in such items is hereafter collectively referred to as "work performed in the construction of the Project."
 - (2) The Contractor has received payment in full, less retainage, for all work performed in the construction of the Project through the current Payment Request, and, except for retainage, there are no known outstanding claims against Owner in connection with the Project, except for claims which have been made in writing to Owner within the time periods described in the Contract Documents above (which written notice and time periods are of the

essence and a strict condition precedent for any claims for additional time or money).

- (3) The Contractor has not assigned to anyone any claim, any lien, or any right to file or perfect a lien as of the time of the current Payment Request. The Contractor has paid in full (less retainage) all laborers, subcontractors, suppliers, materialmen and others with respect to work performed on the job.
- (4) No such party has filed or can properly file any claim, demand, lien, encumbrance or action against the Owner.
- (5) The Contractor has not given or executed any security interest for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be placed upon or installed in the Project, and is conveying good title to the same to the Owner. The Contractor has paid all amounts due benefit funds, applicable taxes, applicable fees, duties and other like charges relating directly or indirectly to the Work performed in the construction of the Project. The Contractor has complied with all applicable federal, state and local laws, codes, ordinances and regulations relating to the Work performed in the construction of the Project. The Contractor has the right, power and authority to execute the Payment Request.

b. Waiver and Releases: Other than claims that have been made in writing to the Owner within the time periods set forth in the Contract Documents, the Contractor waives and releases any claims, causes of action, suits and demands which the Contractor ever had or now has against the Owner or the Project.

c. Indemnification: Contractor agrees to indemnify and hold harmless Owner, its officers, directors, members or employees from any and all damages, costs, expenses, demands, and suits, (including reasonable attorneys' fees) resulting from any cause of action, claim or lien filed or made by any of Contractor's subcontractors or Contractor's material suppliers with respect to any (i) work performed in the construction of the Project or work which should have been performed in construction of the Project, through the current Payment Request, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Contractor. Upon the request of the Owner, Contractor will undertake to defend such cause of action, claim or lien filing at its sole cost and expense.

4. It is the Contractor's responsibility to assure that a current IRS Form W-9 Request for Taxpayer Identification Number and Certification is on file with the Owner by the Contractor prior to submitting its first Application for Payment.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or

tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

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

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work; and Contractor is not fulfilling its defense and indemnification obligation;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement; if any.
4. Items entitling Owner to retain set-offs from the amount recommended, include but are not limited to:

- a. Owner compensation to Engineer at an estimated average rate as specified in the Supplementary Conditions per each extra personnel hour for labor plus expenses because of the following Contractor-caused events:
- (1) Witnessing retesting of corrected or replaced defective Work;
 - (2) Return visits to manufacturing facilities to witness factory testing or retesting;
 - (3) Submittal reviews in excess of three reviews by Engineer for substantially the same Submittal;
 - (4) Evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby;
 - (5) Deleted Hours worked by Contractor, in excess of normal work hours as defined by Article 6.02 of the General Conditions, necessitating Engineer or Owner to work overtime;
 - (6) Return visits to the Project by Engineer for Commissioning Activities not performed on the initial visit;
- b. Fines levied against the Owner for Contractor's performance of NPDES Erosion and Sedimentation Control Measures or other permit violations.
- c. The repair, rebuilding or restoration of property improvements or facilities by the Owner as outlined in Paragraph 6.13.
- d. Liability for liquidated damages incurred by Contractor as set forth in the Agreement.

E. Prompt Payment Clause

1. Owner and Contractor agree that all partial payments and final payments shall be subject to the Georgia Prompt Pay Act, as originally enacted and amended, and as set forth in O.C.G.A. 13-11-1 through 13-11-11, except as provided below to the extent authorized by law.
2. Interest Rate: For purposes of computing interest on late payments, the rate of interest shall be one-half percent per month or a pro-rata fraction thereof on the unpaid balance as may be due.
3. Payment Periods:
 - a. When Contractor has performed in accordance with the provisions of these Contract Documents, the Owner shall pay Contractor within 60 days of receipt by the Owner or the Owner's representative of any properly completed Application for Payment, based upon work completed or service provided pursuant to the terms of these Contract Documents.

- b. When a subcontractor has performed in accordance with the provisions of its subcontract and the subcontract conditions precedent to payment have been satisfied, Contractor shall pay to that subcontractor and each subcontractor shall pay to its subcontractor, within ten days of receipt by Contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractors work and materials based on work completed or service provided under the subcontract, less retainage expressed as a percentage, but such retainage shall not exceed that retainage being held by the Owner, provided that the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete its work as contractor in its reasonable discretion may require, including but not limited to a payment and performance bond.
4. Interest on Late Payment: Except otherwise provided in these Contract Documents and/or in O.C.G.A. 13-11-5, if a periodic or final payment to Contractor is delayed by more than the time allotted in Paragraph 14.02.E.3b, or if a periodic or final payment to a subcontractor is delayed more than ten days after receipt of periodic or final payment by Contractor or Subcontractor, the Owner, Contractor, or subcontractor, as the case may be, shall pay interest to its Contractor, or subcontractor beginning on the day following the due dates as provided in Paragraph 14.02.E.3b, at the rate of interest as provided herein. Interest shall be computed per month or a pro-rata fraction thereof on the unpaid balance. There shall be no compounded interest. No interest is due unless the person or entity being charged interest received "Notice" as provided in Paragraph 14.02.E.5. Acceptance or progress payments or final payment shall release all claims for interest on said payments.
5. Notice of Late Payment and Request of Interest: Any person or entity asserting entitlement to interest on any periodic or final payment pursuant to the provisions of this Prompt Payment Clause shall provide "notice" to the person or entity being charged interest of the charging party's claim to interest on late payment. "Notice" shall be in writing, served by U.S. Certified Mail – Return Receipt Requested at the time the properly completed Application for Payment is received by the Owner or Owner's representative, and shall set forth the following:
- a. A short and concise statement that interest is due pursuant to the provisions of the Georgia Prompt Pay Act and this Prompt Payment Clause;
- b. The principal amount of the periodic or final payment which is allegedly due to the charging party; and
- c. The first day and date upon which the charging party alleges that said interest will begin to accrue, pursuant to the provisions of the Georgia Prompt Pay Act and this Prompt Payment Clause.
6. These "Notice" provisions are of the essence; therefore, failure to comply with any requirement as set forth in the Prompt Payment Clause precludes the right to interest on any alleged late payment to which said "Notice" would otherwise apply.
7. Integration with the Georgia Prompt Pay Act: Unless otherwise provided in these Contract Documents, the parties hereto agree that these provisions of this Prompt Payment Clause supersede and control all provisions of the Georgia Prompt Pay Act (O.C.G.A. 13-11-1 through 13-11-11), as originally enacted and as amended, and that any dispute arising

between the parties hereto as to whether or not the provisions of this contract or the Georgia Prompt Pay Act control will be resolved in favor of these Contract Documents and its terms.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment, retainage notwithstanding, free and clear of all Liens.
- B. No materials or supplies for the Work shall be purchased by Contractor or subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. Contractor warrants that Contractor has good title to all materials and supplies used by Contractor in the Work, free from all liens, claims or encumbrances.
- C. Contractor shall indemnify and save Owner, its officers, directors, members, or employees harmless from all claims growing out of the lawful demands for payment by subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. Contractor shall, at Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If Contractor fails to do so, then Owner may, after having served written notice on the said Contractor either pay unpaid bills, of which Owner has written notice, direct, or withhold from Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to either Contractor or to Contractor's Surety. In paying any unpaid bills of Contractor, Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as payment made under the Contract by Owner to Contractor and Owner shall not be liable to Contractor for any such payment made in good faith.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion. Specific items of Work that must be completed prior to the Engineer's issuance of a certificate of Substantial Completion include, but are not limited to, the following:
1. Correction of all deficient Work items listed by all state, local, and other regulatory agencies or departments.
 2. All submittals must be received and approved by the Engineer, including but not necessarily limited to, the following:
 - a. Record documents.
 - b. Factory test reports, where required.
 - c. Equipment and structure test reports.
 - d. Manufacturer's Certificate of Proper Installation.

e. Operating and maintenance information, instructions, manuals, documents, drawings, diagrams, and records.

f. Spare parts lists.

3. All additional warranty or insurance coverage requirements have been provided.

4. All manufacturer/vendor-provided operator training is complete and documented.

5. Other items of Work specified elsewhere as being prerequisite for Substantial Completion.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after Final the date of Substantial Completion has been achieved subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. Owner at any time may ~~request direct~~ request direct Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to ~~be ready for~~ sufficiently progressed

~~towards its intended use and substantially complete.~~ If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work described in Paragraph 14.05.A.1 ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments. Under no circumstances will Contractor's application for final payment be accepted by the Engineer until all Work required by the Contract Documents has been completed.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment, if requested by the Engineer;
 - c. a list of all Claims against Owner that Contractor believes are unsettled;
 - d. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

e. the final Change Order signed by the Contractor to close the Contract; and

fd. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work, if requested by the Engineer.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying all documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, ~~within ten days after receipt of the final Application for Payment,~~ indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Thereupon Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment. If the Application for Payment and accompanying documentation are appropriate as to form and substance, Owner will in accordance with the applicable State or local General Law, pay Contractor the amount recommended by Engineer.

C. Payment Becomes Due:

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

14.08 Final Completion Delayed

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

14.09 *Waiver of Claims*

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

14.10 Change of Payment

- A. Upon execution of the Agreement, and if Owner elects to make payments to Contractor electronically, Contractor shall provide Owner with written payment instructions and all necessary forms required by Owner to effectuate payments to Contractor by wire transfer (the "Payment Information"). Contractor shall submit the initial Payment Information to Owner by certified mail or hand delivery only. If Owner receives a request to change such Payment Information, Owner agrees that it will not modify or make a change to this Payment Information without oral confirmation, followed by written confirmation, from Contractor's Chief Financial Officer or Contractor's VP of Finance. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as required under the terms of this Agreement.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor ~~shall~~ may be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's repeated disregard of the authority of Engineer or Owner; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents;
 5. If Contractor abandons the Work, or sublets this Contract or any part thereof, without the previous written consent of Owner, or if the Contract or any claim thereunder shall be assigned by Contractor otherwise than as herein specified;
 6. Contractor is adjudged bankrupt or insolvent;
 7. Contractor makes a general assignment for the benefit of creditors;
 8. A trustee or receiver is appointed for Contractor or for any of Contractor's property;
 9. Contractor files a petition to take advantage of any debtor's relief act, or to reorganize under the bankruptcy or applicable laws;
 10. Contractor repeatedly fails to supply sufficient skilled workmen, materials or equipment;
 11. Contractor fails to make satisfactory progress toward timely completion of the work; or
 12. Contractor repeatedly fails to make undisputed prompt payments to subcontractors or material suppliers for labor, materials or equipment provided Owner has made payment to the Contractor.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor, unless Contractor otherwise cures the deficiency in accordance with Paragraph 15.02.D.:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court ~~or arbitration or other dispute resolution or arbitration or other dispute resolution~~ costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- ~~F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.~~

F. Deleted.

G. Any termination of the Contractor for alleged cause under this Paragraph 15.02 that is ultimately held unjustified, is automatically deemed a termination for the convenience of the Owner, under Paragraph 15.03.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate or discontinue, in whole or in part, 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. direct expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, ~~plus fair and reasonable sums for overhead and profit on such expenses;~~
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution ~~or arbitration or other dispute resolution~~ costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; ~~and~~
 4. reasonable expenses directly attributable to termination; and-
 5. overhead and profit in the form of the Contractor's Fee as established in the Agreement," ten percent overhead and profit for those costs agreed to in Paragraphs 15.03.A.1 through 15.03.A.4 above.
- B. Contractor shall submit within 30 calendar days after receipt of notice of termination a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. Owner shall review, analyze, and verify such proposal and negotiate an equitable amount and the Contract may be modified accordingly.

C. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.
- C. Except as allowed in Paragraph A above, the Contractor shall not suspend the work and shall not remove any equipment, tools, supplies, materials, or other items without the written permission of the Owner.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

~~A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.~~

~~B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.~~

~~C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:~~

~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or~~

~~2. agrees with the other party to submit the Claim to another dispute resolution process; or~~

3. ~~gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.~~

A. If either party believes that a dispute exists which arises out of this Agreement that requires resolution, such party shall notify the other party in writing with a request to conduct informal negotiations to resolve such dispute. Within thirty days after the receipt of such a request, the parties shall meet and confer and attempt to resolve the dispute in good faith. Executive and/or managerial personnel from each party, with actual authority to resolve the dispute, shall be in attendance at such a meeting.

B. If either party believes that the dispute cannot be resolved after such effort has been undertaken, then such party shall notify the other in writing. If such informal negotiations does not resolve the dispute, it is agreed that such matters may, at Owner's sole discretion, shall be submitted to nonbinding mediation before any legal proceeding is commenced. The parties shall equally bear the fees and expenses charged by the mediator.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, or by electronic mail and followed by written confirmation, to the last business address known to the giver of the notice.

B. All notices required of Contractor shall be performed in writing to the appropriate entity.

C. Electronic mail and messages without confirmation noted above will not be recognized as a written notice.

D. If the Contractor does not notify the Owner in accordance with Paragraph 10.05 of the belief that a field order, additional work by other contractors or the Owner, or subsurface, latent, or unusual unknown conditions entitles the Contractor to a Change Order, no consideration for time or money will be given the Contractor.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

- A. This Agreement is made and entered into in the State of Georgia and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The Superior Court of Henry County, Georgia shall have jurisdiction over any disputes arising out of this agreement. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

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

17.07 *Addresses*

- A. Both the address given in the Bid form upon which this Agreement is founded, and Contractor's office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to Contractor shall be certified, mailed, or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the first-named place, in any post office box regularly maintained by the post office department, of any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon date of such delivery or mailing. The first-named address may be changed at any time by an instrument in writing, executed by Contractor, and delivered to and acknowledged by the Owner and Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon Contractor personally.

17.08 *Forms and Record*

- A. The form of all Submittals, notices, change orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the Engineer.
- B. Contractor shall maintain throughout the term of the Contract, complete and accurate records of all Contractor's costs which relate to the work performed, including the extra work, under the terms of the Contract. The Owner, or its authorized representative, shall have the right at any reasonable time to examine and audit the original records.
- C. Records to be maintained and retained by Contractor shall include, but not be limited to:
 - 1. Payroll records accounting for total time distribution of Contractor's employees working full or part time on the work;

2. Cancelled payroll checks or signed receipts for payroll payments in cash;
 3. Invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items;
 4. Paid invoices and cancelled checks for materials purchase, subcontractors, and any other third parties' charges;
 5. Original estimate and change order estimate files and detailed worksheets;
 6. All project-related correspondence; and
 7. Subcontractor and supplier change order files (including detailed documentation covering negotiated settlements).
- D. Owner shall also have the right to audit: any other supporting evidence necessary to substantiate charges related to this agreement (both direct and indirect costs, including overhead allocations as they may apply to costs associated with this agreement); and any records necessary to permit evaluation and verification of Contractor compliance with contract requirements and compliance with provisions for pricing change orders, payments, or claims submitted by Contractor or any payees thereof. Contractor shall also be required to include the right to audit provision in the contracts (including those of a lump-sum nature) of all subcontractors, insurance agents, or any other business entity providing goods and services. The provisions of this paragraph shall apply to all costs reimbursable as Cost of the Work except: (i) Work that is self-performed by Contractor on a lump-sum basis; and (ii) preconstruction costs; and (iii) any cost based upon a rate, lump sum, or percentage stipulated in this Agreement.

17.09 Assignment

- A. Contractor shall not assign, sell, transfer or otherwise dispose of the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the Owner. In case Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to Contractor shall be subject to prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for under this Contract.

17.10 Inspection by Public Agencies

- A. Authorized representatives of the federal, state, local and other governmental agencies having jurisdiction over the Work or any part thereof shall have access to the work and any records relevant to the prosecution and progress of the work. The Contractor shall provide proper facilities for such access and inspection.

17.11 Limitation of Liability

- A. The total liability of Contractor to Owner or Owner to Contractor arising under, in connection with or out of this Agreement, whether in contract, tort or any legal theory of recovery, shall be limited to the Contract Price.

END OF SECTION

Section 00 73 00
Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition, with HCWA CMAR Modifications 02/13/26). All provisions which are not so amended or supplemented remain in full force and effect.

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

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

The provisions in this Section of the Specifications shall govern in the event of any conflict between this Section and the General Conditions.

[SC-4.02 to be determined during the Pre-Construction Services phase or Work Authorization preparation phase of the Project]

SC-4.02 *Subsurface and Physical Conditions*

SC-4.02 Add the following new paragraphs immediately after Paragraph 4.02.B:

- C. The following reports of explorations and tests of subsurface conditions at or contiguous to the Site have been used by the Engineer in preparing the Contract Documents:
1. Report dated _____, prepared by _____, entitled: "_____
_____". None of the "technical data" contained in such report may be relied upon by the Contractor.

[OR]

- C. No reports of explorations and tests of subsurface conditions at or contiguous to the Site.

- D. The following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) have been used by the Engineer in preparing the Contract Documents:

1. Drawings dated _____, prepared by _____, entitled: "_____
_____". [None] [All] of the information in such drawings constitutes "technical data" on which Contractor may rely

[OR]

Supplementary Conditions

- E. The reports and drawings identified above are not part of the Contract Documents, but the “technical data” contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.

[SC-4.06 to be determined during the Pre-Construction Services phase or Work Authorization preparation phase of the Project]

SC-4.06 *Hazardous Environmental Conditions*

SC-4.06 Add the following new paragraphs immediately after Paragraph 4.06.I:

- J. The following lists the reports and drawings known to the Owner related to Hazardous Environmental Conditions that have been identified at the Site:
 - 1. Report dated _____, prepared by _____, entitled: “_____”. None of the “technical data” contained in such report may be relied upon by the Contractor.

[OR]

SC-4.06 *Hazardous Environmental Conditions*

SC-4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

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

SC-5.04 *Contractor’s Liability Insurance*

SC-5.04.B.1, There are no other additional insureds other than the Owner and Engineer.

[SC-6.02 to be determined during SC-5.04.C.4, following Paragraph 5.04.B.6.b, Add,

Change, “General Aggregate \$5,000,000” to “General Aggregate \$10,000,000”

SC-5.04.C.4.b, following Paragraph 5.04.C.4.b

Add, “Railroad Insurance: The Contractor shall provide Public Liability and Property Damage Liability Insurance for each of the railroad crossing permits. Each policy shall, as a minimum, have a combined single limit of [\$2,000,000.00] [\$3,000,000.00 for CSX] per occurrence. This insurance must meet all the requirements of the respective railroad.”

SC-6.01 *Supervision and Superintendence*

SC-6.01. Paragraph B, following second sentence,
Add, "Project Manager shall be assigned to the Project on a full time basis during execution of the Work."

SC-6.02 *Labor; Working Hours*

SC-6.02 Add the following subparagraph 6.02.D.1:

1. The rates which will apply for the overtime work on behalf of the Owner: in the range of \$50.00/hour, depending on actual Resident Project Representative assigned to the Project.

SC-6.06 *Concerning Subcontractors, Suppliers, and Others*

SC-6.06.J Change "... minimum 20 percent ..." to "... minimum **xx** percent ..."

SC-6.08 *Permits*

SC-6.08 Add the following subparagraphs 6.08.B.1:

1. The Owner will provide the following Permits:
 - a. Railroad Encroachment Permits
 - b. Land Disturbance Permit
 - c. [list other permits to be provided by the Owner/Engineer]

SC-6.13 *Safety and Protection*

SC-6.13 Delete the second sentence of Paragraph 6.13.C.

[OR]

SC-6.13 The Owner does not have a safety program applicable to the Work.

[OR]

SC-6.13 The Owner's safety program that is applicable to the Work can be found [in Appendix __] [at the offices of _____]

[SC-14.02.D to be determined during the Pre-Construction Services phase or Work Authorization preparation phase of the Project]

SC-14.02.D. *Reduction in Payment:*

SC-14.02.D After paragraph 14.02.D. 4.b, add the following:

- d. The following rates will for the additional services performed by the Engineer on behalf of the Owner:

<u>Labor Grade</u>	<u>Rate</u>
Principal Engineer	\$200 to \$275

Supplementary Conditions

Engineer or other Licensed Professional	\$125 to \$200
Non-Licensed Individual	\$75 to \$125

END OF SECTION