



**PORT MUSKOGEE**

SUCCESS FLOWS FROM MUSKOGEE

# Project Manual for 43RD STREET UTILITY EXTENSION

5201 Three Forks Road  
Fort Gibson, Oklahoma 74434

Project No. 160013

Issued For Bid

June 22<sup>nd</sup>, 2025



MAKING OUR CLIENTS SUCCESSFUL FOR MORE THAN 100 YEARS

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**NOTICE OF  
INVITATION FOR BIDS (IFB)**

**PUBLISHED IN THE TULSA WORLD & MUSKOGEE PHOENIX ON**

**JUNE 22, 2025 & JUNE 29, 2025**

**MUSKOGEE CITY COUNTY PORT AUTHORITY**

\* \* \* \* \*

**ADVERTISEMENT FOR BIDDERS**

Notice is hereby given that the Muskogee City County Port Authority will receive sealed bids at the Port Authority Office, 5201 Three Forks Road, Fort Gibson, Oklahoma 74434, up to 3:00 PM on July 29, 2025 for furnishing all labor and materials and performing all work necessary for:

**43<sup>RD</sup> STREET UTILITY EXTENSION**

The project includes a 3399 linear feet of waterline extension along S 43rd Street E to connect into the existing water system along S 45th Street E, and an 870 linear feet of sanitary sewer extension along S 43rd E to supply utilities for future development in the area. The installation of both utilities will require concrete pavement and gravel repair; additionally, the construction of the water sewer line will require jacking and boring of the proposed utility.

The contract shall be bid and awarded on a lump sum basis. Bid items listed in the bid manual are only provided to establish a unit price for each bid item. The whole work under this contract will be awarded as a single contract to the lowest responsible bidder for the work. No bid may be withdrawn for at least forty-five (45) days after the scheduled closing time for receipt of bids.

Plans and Specifications are on file and can be seen at and obtained on the Port Muskogee website at [portmuskogee.com/about/newsroom](http://portmuskogee.com/about/newsroom)

Each proposal must be accompanied by a Bidder's Bond, or Cashier's Check upon any solvent Bank or Trust Company, payable without reserve to the Muskogee City County Port Authority, in an amount not less than five percent (5%) of the total amount of the bid. Bid security of the two low bidders will be retained until approval of contract and execution of satisfactory bonds by the successful bidder, or until other disposition on the bids is made.

The bonds required will be a Payment Bond, a Performance Bond, each in the full amount of the contract. The Port will not accept letters of credit in lieu of any bond required herein.

A mandatory pre-bid conference is scheduled on July 10, 2025 at 9:30 AM. The pre-bid conference will be held in-person at the Port Authority Office: 5201 Three Forks Road, Fort Gibson, Oklahoma 74434.

Bids must be sealed and either mailed or delivered. Bids received after the stated date and time will not be accepted and will be returned to the Bidder unopened. The bids will be opened publicly and read aloud beginning at 3:00 PM on July 29, 2025, at the Port Authority Office, 5201 Three Forks Road, Fort Gibson, OK 74434.

## **NOTICE OF INVITATION FOR BIDS (IFB)**

The bidder (Proposer) must supply all the information required by the bid and proposal form including completion of affidavits or his bid will be considered incomplete and therefore rejected.

**Contractors shall be pre-qualified with the City of Muskogee. If a contractor is not pre-qualified, they must submit for qualification with the City during the bidding process. For more information, please contact Ashley Wallace at [awallace@muskogeeonline.org](mailto:awallace@muskogeeonline.org).**

The contract shall be awarded on a lump sum basis as follows: the Total Base Bid Amount including any properly submitted and received bid modifications plus such successive Additive Bid items as the Owner in its discretion decides to award in the manner set forth in Instruction for bidders.

The Port may request of any bidder, before his bid is considered for award, that he submit a statement of facts as to his previous experience in performing work of the same character and magnitude, as to his business and technical organization, and financial resources and plant available and to be use in performing the contemplated work. Each bidder must have such information, together with a recent financial statement, available upon request.

The Muskogee City County Port Authority reserves the right to evaluate bids, to reject any or all bids, and to waive any informality in any bid.

## **INFORMATION FOR BIDDERS**

### **1. DEFINED TERMS.**

Terms used in this Information for Bidders which are defined in the General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. Additional terms used in these instructions to Bidders have the meanings indicated below:

- 1. Copies of the Plans and Specifications will be available at the Port's website: [portmuskogee.com/about/newsroom](http://portmuskogee.com/about/newsroom). See bid advertisement for more information.**

### **2. COPIES OF BIDDING DOCUMENTS.**

2.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement may be obtained from Engineer (unless another issuing office is designated in the Advertisement).

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

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

### **3. EXAMINATION OF CONTRACT DOCUMENTS AND SITE.**

3.1 Before submitting a Bid, each Bidder shall (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (d) study and carefully correlate Bidder's observations with the Contract Documents.

3.2 Reference is made to the Contract documents for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which have been relied upon by Engineer in preparing the Drawing and Specifications. Owner will make copies of such reports available to any Bidder requesting them. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract Documents. Before submitting his Bid each Bidder will, at his own expense, make such additional investigation and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the time, price and other terms and conditions of the

Contract Documents.

3.3 On request, Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid.

3.4 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by Contractor in performing the Work are identified in the General Requirements or Drawings.

3.5 The submission of a Bid will constitute an incontrovertible representation of the Bidder that he has complied with every requirement of this Article 4 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

3.6 Information obtained from an officer, agent, or employees of the Owner, Engineer, or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.

#### **4. INTERPRETATIONS.**

All questions about the meaning or intent of the Contract documents shall be submitted to Engineer in writing no later than four days prior to the time set for receipt of bids. Replies will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

#### **5. BID SECURITY.**

5.1 Bid Security shall be made payable to Owner, in an amount of five percent of the Bidder's maximum Bid price and in the form of a certified check or a Bid Bond issued by a Surety meeting the requirements of paragraph 5.1 of the General Conditions. A Bid Bond form for this purpose is provided in the Project Manual.

5.2 The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required Contract Security, whereupon it will be returned; if the Successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security with 15 days of the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. Attorneys-in-fact who sign Bid Bonds shall file with each bond a certified and effective dated copy of their power of attorney. The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) by Owner to Contractor and the required Contract Security is furnished or the sixty-first day after the Bid opening. Bid Security of other Bidders will be returned within seven days of the Bid opening.

## **6. CONTRACT TIME.**

The number of days with which, or the date by which, the Work is to be completed (the Contract Time) is set forth in the Bid Form and will be included in the Agreement.

## **7. LIQUIDATED DAMAGES.**

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

## **8. SUBSTITUTE MATERIAL AND EQUIPMENT.**

The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Application for acceptance of substitute items will not be considered by Engineer until after the "Effective Date of the Agreement." The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in paragraph 6.5 of the General Conditions which may be supplemented in the General Requirements.

## **9. SUBCONTRACTORS AND MANUFACTURERS.**

9.1 Article 6.8 of the General Conditions requires the identity of certain Subcontractors and other persons and organizations to be submitted to Owner. Bidders shall submit to Owner a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for the work. Such list shall be accompanied by evidence stating qualification for each such Subcontractor, person and organization. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, either may request the apparent successful bidder to submit an acceptable substitute. Any Subcontractor, other person or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be considered acceptable to Owner and Engineer.

9.2 In contracts where the contract price is on the basis of the cost-of-the-work plus a fee, the apparent successful bidder, prior to the Notice of Award (NOA), shall identify in writing to Owner those portions of the work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the work with Owner's written Consent.

9.3 No Contractor shall be required to employ any Subcontractor, other person or organization against whom he has reasonable objection.

## **10. BID FORM.**



10.1 The Bid Form shall be executed when submitted. Only one (1) copy of the Bid Form is required. All bids shall be made only on the Bid Form furnished with the Specifications. All blank spaces for bid prices on each Bid Form furnished with the Specifications. All blank spaces for bid prices on each bid schedule upon which the Bidder is submitting a bid shall be filled in, or it will be presumed that any such omitted entry is intentional, and the corresponding item is bid at no cost.

10.2 Bid Forms shall be completed in ink or by typewriter.

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

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

10.5 All names shall be typed or printed below the signature.

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

10.7 The address to which communications regarding the Bid are to be directed shall be shown.

## **11. SUBMISSION OF BIDS.**

11.1 Bids shall be submitted at the time and place indicated in the Advertisement and shall be included in an opaque sealed envelope, addressed to the Owner and marked with the project title and name and address of the Bidder and accompanied by the Bid Security and other required documents. The envelope shall also bear the name of the Bidder, his address and his license number, if such license is required by applicable law. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof. Any bid received after the time and specified will not be considered.

11.2 The following shall be submitted with and included as a part of the bid on the forms provided or as otherwise described herein:

Bid Form  
Bid Bond  
Business Relationships Affidavit  
Bid Schedule

Equal Employment Opportunity  
Non-collusion Affidavit  
Project Superintendent & Supervision Roster  
Certification of Non-Discrimination  
Certificate of Non-Segregated Facilities

## **12. OPENING OF BIDS.**

12.1 Bids will be opened publicly unless stated otherwise in the Advertisement for Bids. When Bids are opened, they will be read aloud, and an abstract of the amounts of the base Bids and major alternates (if any) will be made available within ten days after the opening of Bids.

## **13. BIDS TO REMAIN OPEN.**

All bids shall remain open for thirty (30) days after the day of the Bid opening, but Owner may, in his sole discretion, release any Bid and return the Bid Security prior to that date.

## **14. AWARD OF CONTRACT.**

14.1 Owner reserves the right to reject any and all bids, to waive any and all informalities and to negotiate contract terms with the successful bidder, and the right to disregard all nonconforming, non-responsive, conditional or unbalanced bids. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.2 In evaluating bids, Owner will consider the qualifications of the bidders, whether or not the bids comply with the prescribed requirements and alternates and unit prices if requested in the bid forms. It is Owner's intent to accept alternates (if any are accepted) in the order in which they are listed in the bid form but Owner may accept them in any order or combination.

14.3 Owner may conduct such investigations as he deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the work in accordance with the contract documents to Owner's satisfaction within the prescribed time.

14.4 Owner reserves the right to reject the bid of any Bidder who does not pass any such evaluation to Owner's satisfaction; such rejection shall not give rise to a cause of action against the Owner or Engineer, or impose a requirement upon the Owner or Engineer to divulge the information upon which such rejection is based.

14.5 If the contract is to be awarded, it will be awarded to the lowest bidder whose evaluation by

Owner indicates to Owner that the award will be in the best interests of the project.

14.6 If the contract is to be awarded, Owner will give the successful bidder a Notice of Award (NOA) within 45 days after the day of the bid opening unless extended by mutual agreement between Owner and the Successful Bidder.

## **15. PERFORMANCE AND OTHER BONDS.**

Paragraph 5.1 of the General Conditions set forth Owner's Requirements as to performance and other bonds. When the Successful Bidder delivers the executed agreement to Owner it shall be accompanied by the required Contract Security. Attorneys-in-fact who sign Payment Bonds, Performance Bonds and Maintenance Bonds shall file with each bond a certified and effective dated copy of their power of attorney. The City will not accept letters of credit in lieu of any bonds required herein.

## **16. SIGNING OF AGREEMENT.**

When Owner gives a Notice of Award (NOA) to the successful bidder, it will be accompanied by at least three (3) unsigned counterparts of the Agreement and all other contract documents. Within 15 days thereafter Contractor shall sign and deliver at least three (3) counterparts of the agreement to Owner with all other contract documents attached. Within ten (10) days thereafter Owner will deliver all fully signed counterparts to Contractor. Engineer will identify those portions of the contract documents not fully signed by Owner and Contractor and such identification shall be binding on all parties.

END OF SECTION  
Revised 5/13/2025

## BID FORM

**OWNER:** Muskogee Municipal Authority  
229 W Okmulgee Ave  
Muskogee, OK 74401

**PROJECT: 43<sup>RD</sup> STREET UTILITY EXTENSION**

**PROJECT NO.: 160013**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to complete all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.

2. BIDDER accepts all of the terms and conditions of the Information for Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain open for 45 days after the day of Bid opening. BIDDER shall sign the Agreement and submit the Contract Security and other documents required by the Contract Documents within fifteen days after the date of OWNER'S Notice of Award.

3. In submitting this Bid, the BIDDER represents, as more fully set forth in the Agreement, that:

A. BIDDER has examined copies of all the Contract Documents and Bidding Documents and of the following addenda:

Date	Number
_____	_____
_____	_____
_____	_____

(receipt of all of which is hereby acknowledged) and also copies of the Advertisement and the Information for Bidders;

B. BIDDER has examined the site and locality where the Work is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the Work and has made such independent investigations as BIDDER deems necessary.

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

4. In submitting this Bid, BIDDER represents that:

A. The total bid for each Bid Schedule includes all work necessary to complete that portion of the project described in each Bid Schedule, and the total of all Bid Schedules represents the entire scope of work covered by the Contract Documents. If a particular item of work is not specifically separated as a bid item, the cost therefore is to be considered included in the bid item most nearly related.

B. The total bid for each Bid Schedule is based on the quantities shown on the Bid Form and on the dimensions shown on the drawings where specific quantities are not itemized. When Bid Schedules are based upon unit prices, the Contract Amount will be adjusted by change order at the corresponding unit prices according to the actual quantities and measurement of the finished construction as determined by the Engineer upon completion of construction.

C. BIDDER will complete the work for the following price(s): \$ \_\_\_\_\_

\*The following contract is a LUMP SUM contract. Bid items listed in the bid tabs are only provided to establish a unit price for each bid item.

\*Contingency amount noted bid item #1 should be included in LUMP SUM bid.

5. BIDDER agrees that the Work will be substantially completed within \_\_\_\_ consecutive calendar days after the date when the Contract Time commences to run.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

6. The following documents are attached to and made a condition of this Bid:

- a. Required Bid Security in the form of (Bid Bond) (Certified Check).
- b. A tabulation of Subcontractors and other persons and organizations required to be identified in the bid.
- c. Project Superintendent and Supervision Roster.
- d. Other forms required by Item No. 12 of Information to Bidders.

7. Communications from Owner to Bidder will be sent to the address below.

8. The terms used in this Bid which are defined in the General Conditions of the Construction contract are included as part of the Contract Documents and have the meaning assigned to them in the general Conditions.

9. The Muskogee City County Port Authority reserves the right to evaluate bids, to reject any or all bids and to waive any informality in any bid which includes but not limited to revision to the scope of work to fit the budgeted funds available. Additionally, any bid submitted for work identified as Add Alternate (Striping) may, at the City's discretion, be computed into the total bid for determining lowest price. However, the City also reserves the right to accept all, some or none, of Add Alternate1 or to purchase and select such service from state contract bid price.

**AN INDIVIDUAL**

By \_\_\_\_\_ (Individual's Name)

doing business as \_\_\_\_\_

**A PARTNERSHIP**

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

**A CORPORATION**

By \_\_\_\_\_ (Corporation Name)

\_\_\_\_\_  
(State of Incorporation)

By \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest \_\_\_\_\_  
(Secretary)

(Corporate Seal)

Business address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 20\_\_\_\_.

ITEM NO.	ESTIMATED QUANTITY		ITEM DESCRIPTION & UNIT BID PRICE (written in words)	UNIT BID PRICE (figures)	TOTAL AMOUNT
<b>43rd Street Utility Extension Bid Tabs List</b>					
1	1	LS	Contingency completed in place (Not to exceed \$100,000)	dollars & cents per LUMP SUM.	\$100,000.00
2	1	LS	Mobilization (Not to exceed 6% of Total Amount of Construction Cost Excluding Construction Contingency Cost) complete in place	dollars & cents per LUMP SUM.	
3	1	LS	Construction Management (Not to exceed 10% of Total Amount of Construction Cost) complete in place	dollars & cents per LUMP SUM.	
4	51	SY	Remove Concrete Driveway complete in place	dollars & cents per SQUARE YARD.	
5	89	SY	Remove Gravel Driveway complete in place	dollars & cents per SQUARE YARD.	
6	31	LF	Remove Concrete Curb complete in place	dollars & cents per LINEAR FOOT.	
7	285	LF	Remove Gravel interior of APAC Property complete in place	dollars & cents per SQUARE YARD.	
8	51	SY	Concrete Driveway complete in place	dollars & cents per SQUARE YARD.	
9	31	LF	Concrete Curb complete in place	dollars & cents per LINEAR FOOT.	
10	30	TON	Gravel Driveway complete in place	dollars & cents per TON.	
11	95	TON	Gravel interior of APAC Property complete in place	dollars & cents per TON.	
12	3	EA	Sanitary Sewer Manhole (4' Diameter) complete in place	dollars & cents per EACH.	
13	870	LF	10" PVC Pipe - Sanitary Line complete in place	dollars & cents per LINEAR FOOT.	
14	1	EA	Sanitary Sewer Connection to Existing Manhole complete in place	dollars & cents per EACH.	
15	3,334	LF	8" PVC Pipe - Waterline complete in place	dollars & cents per LINEAR FOOT.	
16	65	LF	Jack and Boring with Casing - 8" PVC Pipe (Waterline) complete in place	dollars & cents per LINEAR FOOT.	
17	2	EA	Fire Hydrant with Three Way Pumper Outlet and Lateral Feed to Mainline complete in place	dollars & cents per EACH.	

ITEM NO.	ESTIMATED QUANTITY		ITEM DESCRIPTION & UNIT BID PRICE (written in words)	UNIT BID PRICE (figures)	TOTAL AMOUNT
18	125	LF	Temporary Fiber Log complete in place		
				dollars &	
				cents per LINEAR FOOT.	
19	1,949	SY	Hydroseed complete in place		
				dollars &	
				cents per SQUARE YARD.	
20	3,592	LF	Temporary Silt Fence complete in place		
				dollars &	
				cents per LINEAR FOOT.	

#### **BID ITEM NOTES**

1. Line item #13 and #15 includes cost of open cut excavation, backfill, and pipe bedding. Cost also includes any necessary fittings, appurtenances, vavles, reducers, and equipment required for installation.
2. Line item #16 includes cost of excavation, casing, carriers, spacers, end seals, grouting, boring and receiving pits, ventilation pipes, and other materials/equipment needed for Jack and boring an utility extension.
3. Line item #8, 10, and #11 inlcudes cost of any subbase as dictated by existing state of driveway and gravel yard.
4. Bid items listed above are provided to establish a unit price for each bid item. Contractor is responsible for utilizing the project plans, and bidding documents to provide a complete cost to install all proposed improvements as indicated.



DOCUMENT – BID BOND

KNOW ALL MEN BY THESE PRESENTS: that we

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
as Principal, hereinafter called the Principal, and

\_\_\_\_\_  
\_\_\_\_\_  
a corporation duly organized under the laws of the State of \_\_\_\_\_ as Surety, hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
\_\_\_\_\_  
as Oblige, hereinafter called the Owner, in the sum of \_\_\_\_\_  
\_\_\_\_\_ dollars \$ \_\_\_\_\_, for the payment of which sum,  
well and truly to be made, Principal and said Surety, bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid for

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
\_\_\_\_\_  
\_\_\_\_\_ ]

NOW, THEREFORE, if the Owner shall accept the Bid of Principal and the Principal shall enter into a Contract with the Owner in accordance with the terms of such Bid, and give such Bond or Bonds as may be specified in the Bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of Principal to enter such Contract and give such Bond or Bonds, if the Principal shall pay to the Owner the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which the Owner may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

PRINCIPAL

(CORPORATE SEAL)

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
SURETY

DOCUMENT – BID BOND: continued

By \_\_\_\_\_

\_\_\_\_\_

ATTORNEY-IN-FACT

(CORPORATE SEAL)

\_\_\_\_\_

\_\_\_\_\_

(This Bond shall be accompanied with  
Attorney-in-Fact's authority from Surety)

END OF SECTION – BID BOND

## **PROJECT SUPERINTENDENT AND SUPERVISION ROSTER**

In accordance with Article 7.01 of the General Conditions, the following individual or individuals will be assigned to this project as resident superintendent and Contractor's representative at the work site (Contractor complete):

<b>Resident Superintendent:</b>	<b>Phone No.</b>	<b>Contact Person</b>
1.		
2.		
3.		
4.		
5.		

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

## BUSINESS RELATIONSHIP AFFIDAVIT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_.

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the architect, engineer, or other party to the project is as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the data of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party of the project is as follows:

\_\_\_\_\_

\_\_\_\_\_

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If none of the business relationships here in above mentioned exist, affiant should so state).

\_\_\_\_\_

Subscribed \_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary

\_\_\_\_\_  
My Commission expires on:

## NONCOLLUSION AFFIDAVIT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says,  
that (s)he is the agent authorized by \_\_\_\_\_, the  
contractor herein, to submit the attached bid to the Muskogee City County Port Authority.  
Affiant further states that the said contractor has not paid, given or donated or agreed to pay, give  
or donate to any officer or employee of the Muskogee City County Port Authority any money or  
thing of value, either directly or indirectly, for special consideration in the letting of a contract.

\_\_\_\_\_  
Signature

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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

My commission expires:

\_\_\_\_\_

## **CERTIFICATE OF NON-SEGREGATED FACILITIES**

The federally assisted construction contractor certifies that he does not maintain or provide for his employee any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washroom, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or other reason. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause, and that he will retain such certifications in his files.

### **NOTICE TO PROSPECTIVE CONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES:**

A Certification of Non-segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Please Print) Name and Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## **CERTIFICATE OF NON-SEGREGATED FACILITIES**

The federally assisted construction contractor certifies that he does not maintain or provide for his employee any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washroom, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or other reason. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause, and that he will retain such certifications in his files.

### **NOTICE TO PROSPECTIVE CONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES:**

A Certification of Non-segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

Certification - The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Please Print) Name and Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

# **CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

## **GENERAL**

BIDDER NAME\_\_\_\_\_

ADDRESS\_\_\_\_\_

INTERNAL REVENUE SERVICE EMPLOYER IDENTIFICATION NUMBER\_\_\_\_\_

## **NONSEGREGATED FACILITIES**

### **NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS:**

(1) A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the equal opportunity clause.

(2) Contractors receiving federally assisted construction contract awards exceeding \$10,000, which are not exempt from the provisions of the equal opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontractors exceed \$10,000 and are not exempt from the provisions of the equal opportunity clause.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

### **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION ON NONSEGREGATED FACILITIES:**

(1) Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the equal opportunity clause.

(2) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause will be required to provide for the forwarding of this notice to prospective subcontracts exceed \$10,000 and are not exempt from the provisions of the equal opportunity clause.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.



DOCUMENT – NOTICE OF AWARD

To: \_\_\_\_\_ (Bidder)

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

Project Name: 43<sup>rd</sup> Street Utility Extension

Owner: Muskogee Municipal Authority

You are notified that your Bid, dated \_\_\_\_\_, 20\_\_ for the above Contract has been considered. You are the apparent successful Bidder and are being awarded the Contract for the above stated Project and which is described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The Contract Price of your Contract is \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

Three copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award. You must comply with the following conditions precedent within 15 days of the date of this Notice of Award, that is by \_\_\_\_\_, 20\_\_.

Deliver to the Owner three fully executed counterparts of the Contract Documents. Each of the counterparts must bear your signature on \_\_\_\_\_.

1. Deliver with the executed Agreement the Contract security (Bonds) as specified in the Instructions to Bidders, General Conditions, and Supplementary Conditions as applicable.

Failure to comply with these conditions within the time specified will entitle Owner to consider your Bid in default, to annul this Notice of Award, and to declare your Bid security forfeited. Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterparts of the Agreement with the Contract Documents attached. You are required to return an acknowledgement copy of this Notice of Award to the Owner.

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

OWNER

Muskogee Municipal Authority

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_ 20\_\_

DOCUMENT – NOTICE OF AWARD: continued

ACCEPTANCE OF AWARD

CONTRACTOR

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_ 20\_\_

Copy to Engineer  
(Use Certified Mail, Return Receipt requested)

END OF SECTION – NOTICE OF AWARD

## AGREEMENT

**OWNER:** Muskogee Municipal Authority  
229 W Okmulgee Ave  
Muskogee, OK 74401

**PROJECT:**

**NUMBER:**

**CONTRACTOR:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, **2025** by and between the OWNER and CONTRACTOR each above identified and collectively referred to as the Parties.

WITNESSETH: That for and in consideration of the payments, covenants and agreements stated herein, the Parties agree as follows:

### Article 1. WORK.

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

### Article 2. CONTRACT TIME.

2.1 The Work shall be substantially completed within **150** consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 3.01 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions.

2.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 2.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved with legal or arbitration proceeding the actual loss suffered by the OWNER if the Work is not substantially 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 **fifteen hundred**

Dollars (\$1,500.00) for each calendar day that expires after the time specified in paragraph 2.1 for substantial completion until the Work is substantially complete.

#### Article 3. CONTRACT PRICE.

3.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows: \$0.00.

#### Article 4. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The CITY ENGINEER as provided in the General Conditions will process applications for payment.

4.1 PROGRESS PAYMENTS: OWNER will make progress payments on the basis of the CONTRACTOR'S Applications for Payment as recommended by the CITY ENGINEER, on or about the first day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in the General Conditions.

4.1.1 Prior to 50 percent of Substantial Completion, progress payments will be in an amount equal to 90 percent of the Work completed, and 90 percent of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made. The project retainage may be reduced to 5 percent of the contract amount once the project has reached 50 percent of Substantial Completion.

4.1.2 Upon Substantial Completion, OWNER will pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Contract Price, less such amounts as the CITY ENGINEER shall determine in accordance with paragraph 14.04 of the General Conditions and less such amounts as the CITY ENGINEER shall determine for completion of punch-list items, if any.

4.2 Final Payment, Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER will pay the remainder of the Contract Price as recommended by the CITY ENGINEER as provided in said paragraph 14.07.

#### Article 5. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

#### Article 6. CONTRACTOR'S REPRESENTATIONS.

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

6.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

6.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by the ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Contract Documents.

6.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 6.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

6.5 CONTRACTOR has given the CITY ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the CITY ENGINEER is acceptable to CONTRACTOR.

#### Article 7. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR, are attached to this Agreement, made a part hereof and consist of the following:

7.1 This Agreement (pages 1 to 5, inclusive).

7.2 Exhibits to this Agreement.

7.3 Performance, Maintenance and Payment Bonds.

7.4 Notice of Award and Notice to Proceed.

7.5 General Conditions (pages 1 to 52, inclusive).

7.6 Supplementary Conditions SC-1 to SC-18

7.7 Specifications bearing the title **43<sup>rd</sup> Street Utility Extension Bid Tabs List** and consisting of divisions and pages as listed in table of contents thereof.

7.8 Drawings, consisting of a cover sheet and sheets numbered **1** through **22**, inclusive, bearing the title **43<sup>rd</sup> Street Utility Extension** or as elsewhere described in the Contract Documents.

7.9 Addenda numbers 0 to 0, inclusive.

7.10 CONTRACTOR'S Bid

7.11 Any Written Amendment or Work Directive Change, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended or repealed by a Written Amendment or Work Directive Change (as defined in Article 1 of the General Conditions).

#### Article 8. MISCELLANEOUS.

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

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

8.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in 4 (four) counterparts each of which shall be deemed an original on the date first above written. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

OWNER: **Muskogee Municipal Authority**

Company: \_\_\_\_\_

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

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

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

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

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

(SEAL)  
ATTEST:

(SEAL)  
ATTEST:

\_\_\_\_\_  
License No. \_\_\_\_\_  
(If required by Law)

Agent for Service of process

\_\_\_\_\_  
(If Owner is a public body, attach  
evidence of authority to  
sign and resolution or other documents  
authorizing execution of Agreement)

\_\_\_\_\_  
(If required by law)

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

The effective date of the contract is \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Address for giving notices:

**OWNER:**

Muskogee Municipal Authority  
229 W Okmulgee Ave  
Muskogee, Oklahoma 74401

**CONTRACTOR:**

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

Bus: \_\_\_\_\_

Fax: \_\_\_\_\_



DOCUMENT – LABOR AND MATERIAL PAYMENT BOND

This Bond is issued simultaneously with Performance Bond in favor of Owner conditioned on the full and faithful performance of the Contract.

KNOW ALL MEN BY THESE PRESENTS: that

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

as Principal, hereinafter called Contractor, and

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

as Surety, hereinafter called Surety, are held, and firmly bound unto

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

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written Agreement dated \_\_\_\_\_, 20 \_\_, entered into a contract with Owner for \_\_\_\_\_

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as one having a direct contract with the Contractor or with a Subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

DOCUMENT – LABOR AND MATERIAL PAYMENT BOND: continued

- B. The above named Contractor and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of 90 days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant:
1. Unless claimant other than one having a direct contract with Contractor, shall have given written notice to any two of the following: the Contractor, the Owner, or the Surety within 90 days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to Contractor, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.
  2. After the expiration of one year following the date on which Contractor ceased Work on the Contract, it being understood, however, that if any limitation embodied in this Bond is prohibited by any Law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such Law.
  3. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
- D. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

CONTRACTOR

(CORPORATE SEAL)

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

DOCUMENT – LABOR AND MATERIAL PAYMENT BOND: continued

SURETY

COUNTERSIGNED: Resident Agent

State of Oklahoma

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

ATTORNEY-IN-FACT

(CORPORATE SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
(This Bond shall be accompanied with  
Attorney-in-Fact's authority from Surety)

\_\_\_\_\_  
END OF SECTION - LABOR AND MATERIAL PAYMENT BOND

DOCUMENT – PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

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

as Principal, hereinafter called Contractor, and

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

as Surety, hereinafter called Surety, are held and firmly bound unto

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

as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written Agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with Owner for \_\_\_\_\_

\_\_\_\_\_.

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner. Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations, thereunder, the Surety may promptly remedy the default, or shall promptly:

DOCUMENT – PERFORMANCE BOND: continued

- A. Complete the Contract in accordance with its terms and conditions, or
- B. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this Bond must be instituted before the expiration of two years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators, or successors of the Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

CONTRACTOR

(CORPORATE SEAL)

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_

DOCUMENT – PERFORMANCE BOND: continued

SURETY

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_

COUNTERSIGNED: Resident Agent

State of Oklahoma

\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_

ATTORNEY-IN-FACT

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

(CORPORATE SEAL)

(This Bond shall be accompanied with  
Attorney-in-Fact's authority from Surety)

END OF SECTION - PERFORMANCE BOND

BOND NO. [\_\_\_\_\_]

DOCUMENT – MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

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

as Principal, hereinafter called Contractor, and

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

as Surety, hereinafter called Surety, are held and firmly bound unto

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

as Oblige, hereinafter called Owner, in the sum of \_\_\_\_\_  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_), lawful money of the United States of  
America, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, adminis-  
trators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written Agreement dated \_\_\_\_\_ 20\_\_, entered into a con-  
tract with Owner for \_\_\_\_\_ in  
accordance with the Contract Documents, which contract is by reference incorporated herein, and made a  
part hereof, and is referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall remedy any defects  
due to faulty materials or workmanship, and pay for any damage to other work resulting therefrom, which  
shall appear within a period of 1 year from the Date of Substantial Completion of the Work provided for  
in the Contract, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that Owner shall give Contractor and Surety notice of observed defects with  
reasonable promptness.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

DOCUMENT – MAINTENANCE BOND: continued

CONTRACTOR

(CORPORATE SEAL)

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

SURETY

COUNTERSIGNED: Resident Agent

State of Oklahoma

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

ATTORNEY-IN-FACT

(CORPORATE SEAL)

\_\_\_\_\_

\_\_\_\_\_  
(This Bond shall be accompanied with  
Attorney-in-Fact's authority from Surety)

\_\_\_\_\_

END OF SECTION – MAINTENANCE BOND



DOCUMENT – NOTICE TO PROCEED

To: \_\_\_\_\_ (Contractor)

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

Project Name: 43<sup>rd</sup> Street Utility Extension

Owner: Muskogee Municipal Authority

You are notified that the Contract Time(s) under the above Contract will commence to run on \_\_\_\_\_, 20\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement Between Owner and Contractor, the date(s) of Substantial Completion and final completion ready for final payment are \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_\_, respectively.

Before you may start any work at the Site, the General Conditions provide that you and Owner must each deliver to the other, with copies to Engineer and other identified additional insureds certificates of insurance, which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any work at the Site, you must submit the following:

1. Preliminary construction progress schedule.
2. Preliminary procurement schedule.
3. Preliminary schedule of Submittals.
4. Preliminary schedule of values.

You are required to return an acknowledgement copy of this Notice to Proceed to the Owner.

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

OWNER

Muskogee Municipal Authority

\_\_\_\_\_

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

Title: \_\_\_\_\_

DOCUMENT – NOTICE TO PROCEED: continued

ACCEPTANCE OF NOTICE TO PROCEED

CONTRACTOR

\_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Copy to Engineer  
(Use Certified Mail,  
Return Receipt Requested)

END OF SECTION – NOTICE TO PROCEED

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

# **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

**Prepared by**

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

**And**

**Issued and Published Jointly By**

**AMERICAN CONSULTING ENGINEERS COUNCIL  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS  
AMERICAN SOCIETY OF CIVIL ENGINEERS**

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

**AMERICAN CONSULTING ENGINEERS COUNCIL**

**AMERICAN SOCIETY OF CIVIL ENGINEERS**

**This document has been approved and endorsed by  
The Associated General Contractors of America  
AND**

**Construction Specifications Institute**

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-S-A-i or 1910-S-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). EJCDC No. 1910-8 (1996 Edition)

## **Copyright 1996**

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

American Consulting Engineers Council  
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers  
345 East 47th Street, New York, NY 10017

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## **GENERAL CONDITIONS**

### **ARTICLE 1 DEFINITIONS AND TERMINOLOGY**

#### **1.01 *Defined Terms***

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. Addenda--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the 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. Bidding Documents--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. Bidding Requirements--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. Bonds--Performance and payment bonds and other instruments of security.

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--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents). CONTRACTOR'S Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders,



and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR 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 Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. CONTRACTOR--The individual or entity with whom OWNER has entered into the Agreement.

16. Cost of the Work--See paragraph 11.01.A for definition.

17. Drawings--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. Effective Date of the Agreement--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. ENGINEER--The individual or entity named as such in the Agreement.

20. ENGINEER's Consultant--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. 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.

22. General Requirements--Sections or Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. Hazardous Environmental Condition--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. 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.

25. Laws and Regulations; Laws or Regulations--My and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. Liens--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. 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.

28. Notice of Award--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. 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.

30. OWNER--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. Partial Utilization--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. PCBs--Polychlorinated biphenyls.

33. 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.

34. Project--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. Project Manual--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual which may be bound in one or more volumes, is contained in the table(s) of contents.

36. 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.

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

38. Samples--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. Shop Drawings--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. 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.

41. Specifications--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. 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.

43. Substantial Completion--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in

accordance with the Contract Documents, so that the Work (or a specified pan 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. Supplementary Conditions--That part of the Contract Documents, which amends or supplements these General Conditions.

45. Supplier--A manufacturer, fabricator, supplier, distributor, material men, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. 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.

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

48. Work--The entire completed construction or the various separately identifiable plans thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. 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.

50. Written Amendment--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## 1.02 *Terminology*

### A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms “as allowed,” “as approved,” or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective 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 9.10 or any other provision of the Contract Documents.

### B. *Day*

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

### *C. Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or 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 1404 or 14.05).

### *D. Furnish, Install, Perform, Provide*

1. The word “furnish,” when wed 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 wed 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.

5. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 PRELIMINARY MATTERS**

### *2.01 Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER. CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

### *2.02 Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

### *2.03 Commencement of Contract Times: Notice to Proceed*

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

### *2.04 Staffing the Work*

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

### *2.05 Before Starting Construction*

A. **CONTRACTOR's Review of Contract Documents:** Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. **Preliminary Schedules:** Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its 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 Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal: and
3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

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

## *2.06 Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by 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.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

## *2.07 Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.
2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.
3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it

provides a reasonable allocation of the Contract Price to component parts of the Work,

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

#### **3.01 *Intent***

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereto) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

#### **3.02 *Reference Standards***

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, & any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### **3.03 *Reporting and Resolving Discrepancies***

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. 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; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

#### 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

#### 3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

### **ARTICLE 4- AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL 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, CONTRACTOR may make a Claim therefore 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 mechanics or construction lien against such lands in accordance with applicable Laws and Regulations.

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 *Surface & Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER’s Consultants with respect to:

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the



existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.
2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of 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 CONTRACTORS making such final commitment; or
  - c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.
3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

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

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data: and
2. the cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for:
  - a. renewing and checking all such information and data,
  - b. locating all Underground Facilities shown or indicated in the Contract Documents,
  - c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 5.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

#### 4.05 *Reference Points*

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

#### 4.06 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants 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); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other 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.E 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, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F 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 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 5 BONDS AND INSURANCE**

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

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute 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 coverage so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### *5.03 Certificates of Insurance*

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

#### *5.04 CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are

sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason:

5. claims for damages, other than to the Work Itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20:

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

#### 5.05 *OWNER's Liability insurance*

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

#### 5.06 *Property Insurance*

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

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other 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, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR. Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other 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 peril 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, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

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

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

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

#### 5.09 *Acceptance of Bonds and insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

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

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

### **ARTICLE 6- CONTRACTOR'S RESPONSIBILITIES**

#### 6.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

#### 6.02 *Labor, Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.



### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

### 6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *"Or-Equal" items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an 'or-equal' item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1. a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics: (ii) It will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract

Documents.

2. *Substitute items*

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d. as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not incorporation or 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 work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also 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, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and 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 procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineers 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 will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEERs Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 5.05.B and in making changes in the Contract Documents (or in the provisions of any other direct

contract with OWNER for work on the Project) occasioned thereby. Whether or not RENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

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

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other Individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. 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 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 shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against

OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

#### 6.07 *Patent Fees and Royalties*

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

#### 6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses, CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

#### 6.09 *Laws and Regulations*

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

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR'S obligations under paragraph 3.03.

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

#### 6.10 *Taxes*

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

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

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

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

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

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and 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.

E. *Storm Water Requirements:* Sweep parking lots and other paved areas periodically to remove debris. Dispose of debris in waste containers. If outdoor pavement cleaning with detergent is required, collect wash water and dispose of in indoor sinks or sanitary sewer drains, or contact MS4 for other waste collection and disposal options. Track-out control devices are properly constructed at all locations where equipment enters/exits the construction site to a paved surface. Stockpiles of aggregates and other materials are protected with sediment barriers such as compacted berms, dikes or silt fences. All disturbed soil and stockpiles of materials is removed and the area swept daily or as needed to prevent entry into storm drains. Provide an adequate number of trash receptacles for customers and employees. Empty trash from overflowing the receptacles. Pick up litter and other wastes daily from outside areas including storm drain inlet grates. Provide adequate number of covered trash receptacles in or near the contractor's work area. Collect all litter daily from work areas within the project limits and place in covered receptacles. Inspect dumpsters and other waste containers periodically. Repair or replace leaky dumpsters as needed. Cover waste containers and dumpsters. Never dispose of waste products in storm drain inlets. Recycle wastes or dispose of properly. Hazardous materials must comply with hazardous materials storage and disposal requirements. Store materials such as grease, paints, detergents, metals, and raw materials in appropriate, labeled containers. Make sure all outdoor storage containers have lids, and that the lids are adequately

closed.

Store stockpiled materials inside a building, under a roof, or covered with a tarp to prevent contact with rain. Store materials in their original containers and/or secondary containers, both with clearly legible labels. Do not dump waste materials and debris in any wash channel or ditch. Secure portable toilets per manufacturer's recommendations or per the SWP3 requirements. For on-site fueling and fluid maintenance of vehicles and equipment, use drip-pans or absorbent pads unless performed over an impermeable surface in a dedicated fueling area. Keep clean-up materials and kits in designated fueling areas and material delivery and storage areas, and carried on all portable fueling equipment. Temporary storage containment facilities for liquids and petroleum products should have a spill containment volume greater than the volume of all containers within. Slurries and residues from milling or sawing operations which contain cement or concrete should be collected, contained, and disposed of properly. All cement concrete waste products should be placed in compacted impoundment areas either below grade or in bermed areas above grade. Train employees on MCM-6 good housekeeping practices. Assign a person to be responsible for effective implementation of all BMPs. Maintain equipment and vehicles regularly. Check for and fix leaks. Use drip pans to collect leaks or spills during maintenance activities. Wash equipment/vehicles in a designated and/or covered area where the wash water is collected for recycling or for discharge to the sanitary sewer. Contact your local MS4 for disposal options. Contain wastes resulting from on-site vehicle and equipment cleaning. Collect and dispose of the waste per local MS4.

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. 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 ENGINEER's Consultant, 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). 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 14.07.8 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittal. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

#### D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

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

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

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

#### *E. ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

#### *F. Re-submittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

### *6.18 Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in



writing.

#### 6.19 *CONTRACTOR'S General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. 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.

B. 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 acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

### ARTICLE 7-OTHER WORK

#### 7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and
2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the

Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

#### 7.02 *Coordination*

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

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

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination,

### ARTICLE 8 - OWNER'S RESPONSIBILITIES

#### 8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

#### 8.02 *Replacement of ENGINEER*

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

#### 8.03 *Furnish Data*

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

#### 8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

#### 8.05 *Lands and Easements; Repots and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

#### 8.06 *Insurance*

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

#### 8.07 *Change Orders*

OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.8.

#### 8.09 *Limitations on OWNER's Responsibilities*

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

#### 8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

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

### **ARTICLE 9- ENGINEER'S STATUS DURING CONSTRUCTION**

#### 9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

#### 9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress

that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

#### 9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 9.04 *Clarification and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or Interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. 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 a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.05 *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 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, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

#### 9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or 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.

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

- A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.
- B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12,
- C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determination for Unit Price Work*

A. ENGINEER will determine the actual quantities and classification of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of Inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

## ARTICLE 10- CHANGES IN THE WORK; CLAIMS

### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement 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 Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

### 10.02 *Unauthorized Changes in the Work*

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

### 10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

### 10.04 *Notification to Surety*

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

### 10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered

by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER'S Decision*: ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

## **ARTICLE 11 - COST OF THE WORK; CASH 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 necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.

The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.1), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.



h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01 .A and 11.01 .B.

C. *CONTRACTOR'S Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

## 11.02 *Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the 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.

B. 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. 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 9.08.

B. 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.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. if 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 by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined

as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee*: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;
  - b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
  - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
  - e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and
  - f. when both additions and credits are involved in any one change, the adjustment to 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 (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) 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 (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

#### 12.04 *Delays Within the Contractors Control*

A. The Contract Times (or Milestones) will not be extended due to 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.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all (Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If however, such 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 Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

#### 13.05 *OWNER May Stop the Work*

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

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

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

#### 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 Laws or Regulations or 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: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) 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. If CONTRACTOR does not promptly comply with the terms of such 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, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. 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 or by Written Amendment.

C. 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.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

### 13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents. OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees. OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Application for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*B. Review of Applications*

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) 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 (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or 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 referred to 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 Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

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

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, 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. If ENGINEER considers the Work substantially

complete, ENGINEER will prepare and 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. 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 responsibility ties 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.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

remedy such deficiencies.

#### 14.07 *Final Payment*

##### *A. Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

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

##### *B. Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

##### *C. Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, 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 and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of

the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

#### 15.01 *OWNER May Suspend Work*

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

#### 15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, 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), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such

claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. 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.

#### *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, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for 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. for 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. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors. Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

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

#### *15.04 CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or 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. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

### **ARTICLE 16 - DISPUTE RESOLUTION**

#### *16.01 Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract

Documents or by Laws or Regulations in respect of any dispute.

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

### **17.02    *Computation of Times***

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

### **17.03    *Cumulative Remedies***

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

### **17.05    *Controlling Law***

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

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## Conditions of the Contract

### Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract (No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in the Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

SC-1.17 Engineer - The person, firm or corporation with whom the OWNER has entered into an Agreement to provide engineering related services such as design of certain public improvements.

SC- 1.19A City Engineer - the person retained by the City of Muskogee in the position of Director of Engineering for the City.

SC-2.02 Amend the first sentence of paragraph 2.02 A to read as follows: "Owner shall furnish to Contractor up to five (5) copies of the Contract Documents, -----"

#### SC-5.01 Performance and Other Bonds

Amend the first sentence of paragraph 5.01 of the General Conditions to read as follows:

"CONTRACTOR shall furnish Performance, Payment and Maintenance Bonds,---"

and as so amended paragraph 5.01 remains in effect.

SC-5.04 Add the following new paragraph immediately after paragraph 5.04.B:

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

1. Worker's Compensation, etc. – The Contractor shall also comply with Section 3700 of the Labor Code by securing, paying for, and maintaining in full force and effect for the duration of the contract, complete Worker's Compensation Insurance and shall furnish a Certificate of Insurance to the Engineer before execution of the Contract.

All compensation insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason, the OWBER shall be notified by registered mail not less than 30 days before expiration or cancellation is effective.

(1) State: Statutory

2. Contractor's General Liability under paragraph 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverage's and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

(a) General Aggregate (except products - completed Operations) \$1,000,000

(b)	Products - Completed Operations Aggregate	\$ -0-
(c)	Personal and Advertising Injury (Per Person/Organization)	\$1,000,000
(d)	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
(e)	Excess Liability	
	General Aggregate	\$1,000,000
	Each Occurrence	\$1,000,000

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

(a)	Bodily Injury	
	Each Person	\$1,000,000
	Each Accident	\$1,000,000
(b)	Property Damage:	
	Each Accident	\$ 500,000
	or	
(c)	Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000

4. The Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

(a)	Bodily Injury:	
	Each Accident	\$1,000,000
	Annual Aggregate	\$1,000,000
(b)	Property Damage:	
	Each Accident	\$1,000,000
	Annual Aggregate	\$1,000,000

SC-5.06 Property Insurance - Delete paragraph 5.06, 5.07 and 5.08 in its entirety.

SC-6.08 Permits - Add the following language to the end of paragraph 6.08 of the General Conditions: The Contractor is required to obtain a Building Permit from the City of Muskogee for this project. There will be no charge for obtaining this "Permit."

SC-6.10. Amend the first sentence in paragraph 6.10.A to read as follows: "The OWNER qualifies for state and local sales tax exemption in the purchase of certain materials and equipment. The City will appoint the Contractor and his subcontractors as a special purchasing agent of the City. Refer to the "Appointment of Agent" form in the Specifications for limitations and exclusions."

SC-12.1 Time Extensions – The General Condition refer to abnormal weather conditions in section 12.1.

"12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, **abnormal weather conditions** or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR."

The determination and extension of the contract time with regard to weather conditions shall be made in accordance with ODOT's 1999 Standard Specifications.

**Abnormal Weather Conditions** - shall be defined as wet or cold weather condition that exceed the normal adverse



weather days. A normal adverse weather day means adverse weather which, regardless of its severity, is to be reasonably expected for that particular place at that particular time of the year. These days have been established in ODOT's 1999 Standard Specifications in section 108.07. The adverse weather days for Division 1 Headquarters for a given month is shown in the following table:

**NORMAL ADVERSE WEATHER DAYS – DIVISION ONE, 1999**

Month	Avg. Weather Days	Month	Avg. Weather Days
January	8	July	2
February	6	August	2
March	6	September	3
April	4	October	3
May	4	November	5
June	3	December	7

ODOT defines adverse weather days as follows:

*“Actual adverse weather days are those days meeting one or more of the criteria in “A”, “B”, “C”, and “D” below. Time extension for days meeting more than one criterion will take into consideration only that criterion having the greatest impact.*

*Those actual adverse weather days covered by criterion “A”, “B” or “C” when they occur (except prior to mobilization or during suspension for other reasons) or their impact on contract completion. However, those days covered by criterion “D” will be subject to the limitations as noted.*

- A. *Days whose maximum temperature is 32° F or less – one full day allowed.*
- B. *Days whose minimum temperature is 32° F or less, but whose maximum temperature is over 32° F- one half day allowed.*
- C. *Days when ½ inch or more precipitation (rain or snow equivalent) occurs – one full day allowed.*
- D. *Days when weather related conditions exist which prohibit proper performance of work as specified – one full day allowed. Allowance for such days will be subject to the work which is being delayed, being critical to timely contract completion and the Contractor making every reasonable effort to minimize the adverse impact of the conditions.”*

## **Division I General Provisions**

### **Section 01010 - Summary of Work**

#### **Part I - General**

1.1 DESCRIPTION -The Work under this Contract will consist of furnishing all labor, materials and performing all work necessary for the following construction.

#### **PROJECT NAME AND NUMBER**

Contact Mike Stewart, Public Works Director at 918-684-6333, FAX 918-684-6210 if you have any questions concerning the scope of work.

## Section 01030 - Alternates

### **Bidder's Alternate Proposals**

Refer to Information For Bidders for consideration of substitute materials and equipment.

Bidder, as a supplement to the Base bid, may submit Alternate Proposals for products, systems or procedures not specified for consideration by Owner. Alternate Proposals will be considered only if bidder has submitted a Base Bid, which is in accordance with the requirements of the Specifications. Alternate Proposals shall include complete technical data and itemized price adjustments. Alternates not required as a part of the Base Bid will not be a factor in the selection of the successful Bidder and will not be binding upon the Owner. Owner reserves the right to accept or reject Bidder's Alternate Proposals.

END OF SECTION

## Section 01040 - Project Coordination

### Part I - Single Contract Responsibility

1.1 Coordination Of Owner's Work By Others - Refer to Paragraph 7.1 and 7.5 of the General Conditions for coordination of OWNER's work buy others. Supplementary Conditions may contain additional requirements. Coordinate CONTRACTOR's work with OWNER or OWNER's designated coordinator.

1.2 Related Work At The Site - Reference Paragraph 6.20, 7.1 through 7.3 of the General Conditions.

1.3 Local Utilities - Reference Paragraph 6.20, 7.1 through 7.3 of the General Conditions.

Notify the following utilities if conflicts or emergencies arise.

Electricity - Oklahoma Gas & Electric Company (OG+E)  
Contact Person: Raymond Perkins  
Telephone: 918-684-4682 / C918-869-2797

Telephone Company - Southwestern Bell  
Contact Person: David Upton  
Telephone: 918-684-7479

Gas Company - Oklahoma Natural Gas (ONG)  
Contact Person: Tim Helbig  
Telephone: 918-831-8387

Muskogee Public Works Department - Streets, Storm Sewer & Sanitation  
Contact Person: Melving Parker  
Telephone: 918-684-6333

Pollution Control Department (Sanitary Sewer)  
Contact Person: Scott Fletcher  
Telephone: 918-684-6320

Muskogee Water Department  
Contact Person: Eric Twyman  
Telephone: 918-684-3630

City of Muskogee Public Works  
Contact Person: Mike Stewart, Public Works Director  
Telephone: 918-684-6333

OKIE -Utility Location Service 1-800-522-6543

1.4. Owner Facilities - Continuous operation of OWNER's facilities is of critical importance. Schedule and conduct activities to enable existing facilities to operate continuously, unless otherwise specified.

1.5. Contractor's Use of Premises - Where portions of work will be located on public or private property, easements or permits have been obtained by the OWNER. Easements will provide for use of property for construction purposes only to the extent indicated on the easements. Copies of these easements or permits can be obtained from the OWNER. CONTRACTOR shall determine the adequacy of easements obtained and abide by easement

provisions. Confine construction operations to within easement limits or make special arrangement with property owners or appropriate public agency for additional area. Before final payment will be authorized, CONTRACTOR shall furnish the OWNER written releases from property owners or public agencies where side agreements or special easements have been made.

In the event CONTRACTOR is unable to secure written releases, inform the OWNER of the reasons.

OWNER or its representatives will examine the site, and OWNER will direct CONTRACTOR to complete work that may be necessary to satisfy terms of the easement.

1.6. Adjacent Facilities And Properties - Before work at the site is started the CONTRACTOR shall make a thorough examination of pre-existing conditions. Including existing buildings, structures, driveways and other improvements in the vicinity of the work. The CONTRACTOR shall photograph record the pre-existing conditions using either a VCR or still photographs that contain the date of the recording. **CONTRACTOR shall furnish one (1) copy to the OWNER before the work begins.**

These photographs are intended for use as indisputable evidence in ascertaining whether and to what extent damage occurred as a result of the contractor's operation.

**End Of Section**

## Section 01060 - Regulatory Requirements

### Part I - General

1.1 The Contractor shall comply with the following and all applicable local codes, standards, rules and regulations of any Authority having jurisdiction over the Project Site or the Work to be performed.

1.1.1 Williams-Steiger Occupational Safety and Health Act of 1970, (OSHA) Public Law 91-596 - Protection of life, health, and public welfare as it relates to execution of the construction contract is the responsibility of the Contractor. Neither the Owner nor the Engineer will provide observation, inspection, supervision, or any comment on plans, procedures, or actions employed at the Project as they relate to safety of life, health, or public welfare. If conditions are mental to safety, written notice shall be issued by the Contractor and a decision shall be returned to the Contractor for action prior to effecting any unsafe procedure or condition.

1.1.2 Oklahoma Department of Environmental Quality (ODEQ) - ODH Bulletin No. 0589 "Standards for Public Water Supply Facilities" and ODH Bulletin No. 0587 "Standards for Water Pollution Control Facilities".

1.1.3 Oklahoma Department of Transportation (ODOT) - "Standard Specifications for Highway Construction", 1999 Edition.

1.2. CONFLICTS - In case of conflict between applicable codes, the one having the more stringent requirements shall govern. Drawings and specifications shall be followed where they are superior to code requirements.

1.3. ABBREVIATIONS - Reference to a technical society, institution, association, code, or governmental authority may be made in these Specifications in accordance with the following abbreviations:

OKR10	Contractors must adhere to State Statutes OKR10 for Storm Water Prevention
AA	Aluminum Association
AASHTO	American Association of State Highway & Transportation Officials (Formerly AASHO)
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASTM	American Society for Testing & Materials
AWS	American Welding Society
AWWA	American Water Works Association
BOCA	Building Officials and Code Administrators International, Inc.
CRSI-WCRSI	Concrete Reinforcing Steel Institute
CS	U.S. Department of Commerce, Commercial Standard
EPA	United States Environmental Protection Agency
FS or Fed. Spec.	Federal Specification
MIL	Military Specifications
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Assoc.
NFPA	National Fire Protection Association
PS	U.S. Department of Commerce, Product Standard
SPR	U.S. Department of Commerce, Simplified Practice Recommendations
SSPC	Steel Structures Painting Council
UL	Underwriter's Laboratories, Inc.
ODEQ	Oklahoma Department of Environmental Quality

ODOT	Standard Specifications for Highway Construction - Oklahoma Department of Transportation
ODH-0587	Standards for Water Pollution Control Facilities - Oklahoma Department of Health Bulletin No. 0587
ODH-0589	Standards for Public Water Supply Facilities - Oklahoma Department of Health Bulletin No. 0589

END OF SECTION

## Section 01200 - Project Meetings

### **Pre-Construction Conference**

Refer to General Conditions, Paragraph 2.8. Attend a Pre-Construction Conference at a time and place designated by the Engineer.

### **Jobsite Progress Meetings**

Attend periodic jobsite meetings at intervals to be determined at the Pre-Construction Conference, for the purpose of reviewing, scheduling and coordinating Project progress, as well as other matters of general interest to the Project.

Notify Engineer and all major subcontractors involved of work to be discussed at each meeting. Keep written record of the minutes of each meeting, and make record available for review by any person attending each meeting, and by the Engineer and Owner whether or not present at any meeting.

END OF SECTION



## Section 01300 - Submittals

### Part I - General

#### Construction Schedule

1.1 Refer to General Conditions, Paragraph 2.6.1, for initial schedule requirements. Submit periodic updates as necessary to reflect any deviations of actual progress from initial schedule.

1.2 Prepare schedule in format approved by the Engineer and compatible with complexity of Project to illustrate the relationship of major work activities.

1.3 Minimum requirements will be horizontal bar chart on monthly time scale, with separate activities conforming to major divisions of the Specifications. Projected percentage completion of each activity and cumulative total of all activities should be shown for the first day of each month throughout the projected Contract duration.

1.4 Progress Payments may be withheld until the Contractor submits a schedule that truly represents the current status of the project.

#### Insurance Certificates

1.4 Refer to General Conditions, Paragraph 5.3.2, for submittal requirements. Submit updated certificates as necessary to verify current coverage.

#### Project Data Submittal Schedule

1.5 Refer to General Conditions, Paragraph 2.6.2, and General Requirements, Section 01600. List all anticipated submittals of project data as required by the Contract Documents and such additional data as considered necessary by the Contractor. Show proposed submittal dates for each so that Engineer may schedule timely review of submittals. Update monthly to reflect current status.

#### Schedule of Values

1.6 Refer to General Conditions, Paragraph 2.6.3 for requirements. Where payment is to be based on unit bid prices, correlate schedule of values with bid items. Where payment is to be based on fixed price, correlate schedule of values with Divisions and Sections of Specifications. If separate payment is to be requested for materials suitably stored but not installed, segregate delivered costs, including taxes from installation costs including overhead and profit.

### Part II - Shop Drawings, Samples and Product Data

2.1 GENERAL - Refer to General Conditions, Paragraphs 6.24 through 6.25 for responsibilities. Submittals on component parts forming a system, or that are interrelated, shall be submitted at one time as a single submittal in order to demonstrate that the items have been properly coordinated and will function as a unit.

2.1.1 Shop Drawings - Identify details by reference to sheet and detail numbers shown on Contract Drawings. Use same symbols wherever practicable. Reproductions of Contract Drawings are acceptable as shop drawings only when specifically authorized in writing by the Engineer.

2.1.2 Samples - Includes all required physical examples to illustrate materials, equipment or workmanship, which

establish standards by which completed work is judged. Must be of sufficient size and clarity, and in sufficient quantity to clearly illustrate functional characteristics and full range of colors, patterns, textures or other properties which will be actually produced.

2.1.3 Product Data - Includes manufacturer's schematic drawings, catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, test reports, certificates of compliance, and other descriptive data not included on shop drawings. Modify standard descriptive data to delete information which is not applicable, and clearly identify pertinent data.

2.2 SUBMISSION REQUIREMENTS - Submittals shall be made with a letter of transmittal to the Engineer by the Contractor, and **not** by subcontractors, suppliers or manufacturers.

2.2.1 Submit one reproducible (SEPIA) transparency and one opaque print of each Shop Drawing, size not to exceed 24" x 36". Engineer will return reproducible showing approval or exceptions.

2.2.2 Submit samples in number specified, or if not so specified, in triplicate.

2.2.3 Submit Project Data in sufficient quantity for required distribution and record, allowing two copies to be retained by Engineer.

2.2.4 Identify all submittals with the following information, as applicable:

Project title and Engineer's project number.

Name of Contractor, Engineer, originating subcontractor or supplier.

Submittal date, and all revision dates.

Identify each product or material submittal by reference to specification section and page no., drawing no., or any other contract document reference applicable thereto.

Applicable conformance standards.

Include certification of Contractor review and conformity to contract requirements per General Conditions, Paragraph 6.25. Identify any deviations from Contract Documents. Provide 3" x 3" minimum space for Engineer's review stamp.

2.3 Taxes - Refer To Supplemental Conditions For Responsibilities.

### **Part III - Project Record Documents**

3.1 Maintenance of Documents - Maintain at jobsite one record copy of Contract Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other modifications to the Contract, field test records and other approved documents submitted by Contractor in compliance with specification requirements.

3.1.1 Maintain documents at the project apart from documents used for construction. Do not use record documents for construction purposes. Maintain documents in clean, legible condition. Make documents available at all times for inspection of the Engineer and Owner.

3.2 Recording - Label each document "PROJECT RECORD COPY" in 2" high printed letters. Keep record documents current. Do not permanently conceal any work until required information has been recorded.

3.3 Contract Drawings - Legible mark most appropriate drawing to record, where applicable:

- Depths of various elements of foundation in relation to first floor level.
- Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface

- improvements.
- Location of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of structure.
- Field changes of dimension and detail made during construction process.
- Changes made by Change Order or Field Order.
- Details not on original Contract Drawings.
- Any change in location of facilities. Use City Survey Control System.

3.4 Specifications And Addenda - Legibly mark up each Section to record:

- Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
- Changes made by Change Order or Field Order.
- Other matters not originally specified.

3.5 Shop Drawings - Maintain as record drawings. Legibly annotate shop drawings to record changes made after review. Use red felt tip marking pen for all recording.

3.6 Submittals- At completion of project, deliver record documents to the Engineer. Accompany submittal with transmittal letter, in duplicate, containing:

- Date, project title and number.
- Contractor's name and address.
- Title and number of each record document.
- Certification that each document as submitted is complete and accurate.
- Signature of Contractor or his authorized representative.

END OF SECTION

## Section 01450 - Quality Control by Owner

### Part I - Tests And Inspections

1.1 Refer to General Conditions, Article 13

1.1.1 The OWNER shall employ and pay for the services of a qualified independent testing consultant, to perform specified testing services for the following:

Soils Compaction Control	Section 02200 & 02220
Cast-In-Place Concrete	Section 03300
Concrete Pavement	Section 02650

The quality control testing shall include but not be limited to concrete cylinder test, soil density test, and concrete coring. The Owner will not pay for any testing that may be required to get a sample mix or a submittal approved.

1.1.2. Refer to the sections above for specific requirements concerning compaction density, concrete strength and other in place strength requirements.

1.1.3. The Contractor shall schedule the quality control testing when so requested by the Owner.

1.2 Contractor Responsibilities - Provide access to the work and furnish casual labor and facilities to accommodate inspections and tests. When tests fail to meet specified requirements, Contractor shall arrange for retesting after conditions have been corrected. The Contractor will conduct such retesting at no additional expense to the Owner.

END OF SECTION

## Section 01500 - Temporary Facilities and Controls

### Part I - General

The contractor will be responsible for providing or arranging with subcontractors for all temporary utilities, facilities and controls during the construction period.

#### 1.0 Temporary Utilities

1.1 Water - The Contractor will be responsible for locating a source of water supply, adequate for use for construction, drinking, sanitation, and fire protection purposes, and for all connections, distribution facilities, and costs associated connection to such supply. OWNER will furnish construction and drinking water at no cost to the Contractor.

1.2 Electric Power And Lighting - The Contractor will be responsible for locating a temporary source of electrical energy for use during the construction period, and for providing needed power at the site.

1.2.1 The Contractor will provide necessary transformers or other equipment, make necessary connections and provide necessary distribution lines for use by all trades during construction at locations so that power can be secured at any working area with no more than 100-foot extension.

1.2.2 The Contractor will provide and maintain temporary lighting for safe and adequate working conditions throughout all work areas, enclosures and stairways during the construction period.

1.2.3 Temporary electrical work will meet the requirements of the National Electrical Code (NFPA 70), latest edition.

1.2.4 Disconnect and remove all temporary equipment and materials upon completion of construction or conversion to permanent system, and repair all damage caused by temporary installations.

1.3 Temporary Heat And Protection - Contractor will provide and maintain temporary enclosures, weather barriers, heat and ventilation as necessary to properly protect and cure all portions of the work, whether or not permanently incorporated into the Project, at all times during the construction period. Do not use solid fuel burning space heaters, or use or leave unattended equipment or apparatus which might create an unsafe condition.

1.4 Sanitary Facilities - Contractor will provide and maintain, throughout Project duration, adequate temporary toilet facilities in a neat and sanitary condition for all employees and authorized visitors at the site. Place facilities at approved locations near the work.

1.5 Field Offices And Storage Facilities - Provide and maintain, throughout project duration, a suitable temporary field office with adequate heat, light, furniture and supplies to properly keep project documents, records and communications.

1.5.1 Provide and maintain telephone service. Advise Engineer of telephone number.

1.5.2 Provide and maintain storage sheds, trailers or other facilities as necessary to store and protect materials, tools and equipment.

1.5.3 Locate all temporary office and storage facilities as approved by the Engineer.

### **Part III - Execution**

#### **3.0 Temporary Traffic Controls**

3.1 Fences And Barricades - Refer to General Conditions, Paragraph 6.20, for responsibilities with respect to protection of persons and property.

3.1.1 Provide and maintain temporary fences, barriers, lights, guardrails and barricades as indicated in the Contract Documents, or as necessary to regulate vehicular and pedestrian traffic, to secure the work and adjacent property and to protect persons and property. Obtain necessary approvals and permits and provide temporary expedients as necessary to accommodate controls.

3.1.2 Provide foot bridges not less than 4 feet wide with handrails and uprights of dressed lumber. Maintain bridges in place as long as the conditions of the work require their use for safety of the public.

3.1.3. All temporary traffic control measures shall be done according to the "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations", Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), 1988 Edition , Revision 3 dated September 3, 1993, prepared by the U.S. Department of Transportation,

3.2 Access Roads - Construct temporary access roads as shown on the plans.

3.2.1. Maintain temporary road surfaces by patching potholes, eliminate rutting, maintaining drainage and other irregularities that restrict access.

3.2.2. Coordinate with Engineer detours and other operations affecting traffic and access.

3.2.3. Provide temporary dust control on unpaved surfaces such as temporary detours, driveways, haul roads and parking areas as necessary to minimize air pollution from construction activities.

3.3 Existing Facilities - Keep fire hydrants and water control valves free from obstruction and available for use at all times.

3.3.1. Do not impair operation of the existing sanitary or storm sewer systems, Prevent construction material, pavement, concrete, earth, volatile and corrosive wastes from entering sewers, pump stations or other sewer structures.

END OF SECTION

## Section 01600 - Material and Equipment

### Part I - Products List

1.1 Within 30 days after date of Contract, submit to Engineer five copies of a complete list of all products which are proposed for installation. Tabulate list by, and be complete for, each Specifications Section. Include with listing of each product the name and address of manufacturer, trade name, model or catalog designation, reference standard, manufacturer's performance and test data, and subcontractor, as applicable.

1.2 Reference Standards - Reference in the Specifications to standard specifications or publications or technical societies or governmental agencies, such as ASTM, ANSI, AISC, ACI, AWS, Federal Specifications, or Commercial Standards will refer to latest edition adopted and published 30 days prior to receiving bids, unless specifically noted otherwise in the Contract Documents. It will be understood that all manufacturers, producers and their agents, of materials required will have such reference standards available for reference and be fully familiar with their requirements as pertains to their product, material or equipment.

1.2.1 In case of conflict between reference standards and Project Specifications, Project Specifications will govern. In case of conflict between reference standards and codes, the one having the more stringent requirements will govern.

1.3 Manufacturer's Instructions - Refer to General Conditions, Paragraph 6.5. Contractor will obtain and distribute necessary copies of manufacturer's instructions, including two copies to the Engineer. If a conflict exists between the manufacturer's instructions and the Contract Documents, notify the Engineer in writing and obtain his instruction prior to proceeding.

1.4 Product Delivery, Storage And Handling - Deliver materials, products and equipment to the project site in undamaged condition in manufacturer's original, unopened containers or packaging with identifying labels intact and legible. Arrange deliveries in accordance with the Construction Schedule and in ample time to facilitate inspection prior to installation to avoid unnecessary delays in the construction process.

1.4.1 Store and handle products as prescribed by manufacturer or as specified in the Contract Documents in a manner to protect from damage by moisture, weather, abuse or construction operations.

END OF SECTION

## Section 01700 - Project Closeout

### **Part I - General**

1.0 Refer to General Conditions, Article 14, for responsibilities and procedures with respect to completion and Final Inspection of the work.

### **Submittals**

1.2 GENERAL - Submit with or prior to Application for Final Payment, Consent of Surety to Final Payment and remaining releases, waivers, guarantees and all project data required by the Contract Documents.

1.3 PROJECT RECORD DOCUMENTS - Refer to Section 01300 - SUBMITTALS, for responsibilities and procedures for submittal of information required. Contractor will notify Engineer in writing that certified copies of results for all earth compaction tests and concrete cylinder tests conducted have been submitted. The letter will include a summary list of all tests conducted showing date and location.

### **Part II - Post Construction Inspection**

2.0 Prior to expiration of one year from Date of Substantial Completion the Engineer will make visual inspection of the project in company with the Owner to determine whether correction of defective work is required. The Contractor may be required to attend such inspection if requested by Engineer.

2.1 Any corrective work required within one year from Date of Substantial Completion will be performed by the Contractor at no additional expense to the Owner.

END OF SECTION



## **Division I General Provisions**

### **Section 01010 – Summary of Work**

#### **Part I - General**

1.1 DESCRIPTION -The Work under this Contract will consist of furnishing all labor, materials and performing all work necessary for the following construction: The work under this contract is generally described as A 3399' waterline extension along S 43rd Street E to connect into the existing water system along S 45th Street E, and an 870' sanitary sewer extension along S 43rd E to supply utilities for future development in the area.

1.2 PROJECT SIGN – The Contractor shall erect two (2) project information signs. One (1) sign shall be located at each end of the project. The sign shall be a minimum of 4' in height and 4" in width, constructed from 3/4" plywood. The sign shall be painted on both sides with a white background and black lettering. All lettering shall be a minimum of 2-1/2" in height. The sign shall be as follows:

**City of Muskogee  
Progress as Promised**

**43<sup>RD</sup> STREET UTILITY EXTENSION**

Contact Jeff Reeves, Senior Project Manager at [jreeves@muskogeeonline.org](mailto:jreeves@muskogeeonline.org) or 918-684-6212 if you have questions concerning the scope of work.

## **SECTION 01030 - ALTERNATES**

### **BIDDER'S ALTERNATE PROPOSALS**

Refer to Information For Bidders for consideration of substitute materials and equipment.

Bidder, as a supplement to the Base bid, may submit Alternate Proposals for products, systems or procedures not specified for consideration by Owner. Alternate Proposals will be considered only if bidder has submitted a Base Bid, which is in accordance with the requirements of the Specifications. Alternate Proposals shall include complete technical data and itemized price adjustments. Alternates not required as a part of the Base Bid will not be a factor in the selection of the successful Bidder and will not be binding upon the Owner. Owner reserves the right to accept or reject Bidder's Alternate Proposals.

END OF SECTION

## **SECTION 01040 - PROJECT COORDINATION**

### **PART I - SINGLE CONTRACT RESPONSIBILITY**

1.1 COORDINATION OF OWNER'S WORK BY OTHERS - Refer to Paragraph 7.1 and 7.5 of the General Conditions for coordination of OWNER's work buy others. Supplementary Conditions may contain additional requirements. Coordinate CONTRACTOR's work with OWNER or OWNER's designated coordinator.

1.2 RELATED WORK AT THE SITE - Reference Paragraph 6.20, 7.1 through 7.3 of the General Conditions.

1.3 LOCAL UTILITIES - Reference Paragraph 6.20, 7.1 through 7.3 of the General Conditions.

Notify the following utilities if conflicts or emergencies arise.

Electricity - Oklahoma Gas & Electric Company (OG+E)

Contact Person:

Telephone: 918-684-4682

Telephone Company - Southwestern Bell

Contact Person: David Upton

Telephone: 918-684-7479

Gas Company - Oklahoma Natural Gas (ONG)

Contact Person:

Telephone: 918-684-4438

Muskogee Public Works Department - Streets, Storm Sewer & Sanitation

Contact Person: Mike Stewart

Telephone: 918-684-6330

Pollution Control Department (Sanitary Sewer)

Contact Person: Scott Fletcher

Telephone: 918-684-6320

Muskogee Water Department

Contact Person: Eric Twyman

Telephone: 918-684-3630

City of Muskogee

Contact Person: Jeff Reeves

Telephone: 918-684-6212

OKIE - Utility Location Service 1-800-522-6543

1.4. OWNER FACILITIES - Continuous operation of OWNER's facilities is of critical importance.

Schedule and conduct activities to enable existing facilities to operate continuously, unless otherwise specified.

1.5. CONTRACTOR'S USE OF PREMISES - Where portions of work will be located on public or private property, easements or permits have been obtained by the OWNER. Easements will provide for use of property for construction purposes only to the extent indicated on the easements. Copies of these easements or permits can be obtained from the OWNER. CONTRACTOR shall determine the adequacy of easements obtained and abide by easement provisions. Confine construction operations to within easement limits or make special arrangement with property owners or appropriate public agency for additional area. Before final payment will be authorized, CONTRACTOR shall furnish the OWNER written releases from property owners or public agencies where side agreements or special easements have been made.

In the event CONTRACTOR is unable to secure written releases, inform the OWNER of the reasons.

OWNER or its representatives will examine the site, and OWNER will direct CONTRACTOR to complete work that may be necessary to satisfy terms of the easement.

1.6. ADJACENT FACILITIES AND PROPERTIES - Before work at the site is started the CONTRACTOR shall make a thorough examination of pre-existing conditions. Including existing buildings, structures, driveways and other improvements in the vicinity of the work. The CONTRACTOR shall photograph record the pre-existing conditions using either a VCR or still photographs that contain the date of the recording. **CONTRACTOR shall furnish one copy to the OWNER before the work begins.**

These photographs are intended for use as indisputable evidence in ascertaining whether and to what extent damage occurred as a result of the contractor's operation.

**End of Section**

## SECTION 01060 - REGULATORY REQUIREMENTS

### PART I - GENERAL

1.1 The Contractor shall comply with the following and all applicable local codes, standards, rules and regulations of any Authority having jurisdiction over the Project Site or the Work to be performed.

1.1.1 Williams-Steiger Occupational Safety and Health Act of 1970, (OSHA) Public Law 91-596 - Protection of life, health, and public welfare as it relates to execution of the construction contract is the responsibility of the Contractor. Neither the Owner nor the Engineer will provide observation, inspection, supervision, or any comment on plans, procedures, or actions employed at the Project as they relate to safety of life, health, or public welfare. If conditions are mental to safety, written notice shall be issued by the Contractor and a decision shall be returned to the Contractor for action prior to effecting any unsafe procedure or condition.

1.1.2 Oklahoma Department of Environmental Quality (ODEQ) - ODH Bulletin No. 0589 "Standards for Public Water Supply Facilities" and ODH Bulletin No. 0587 "Standards for Water Pollution Control Facilities".

1.1.3 Oklahoma Department of Transportation (ODOT) - "Standard Specifications for Highway Construction", 2009 Edition.

1.2. CONFLICTS - In case of conflict between applicable codes, the one having the more stringent requirements shall govern. Drawings and specifications shall be followed where they are superior to code requirements.

1.3. ABBREVIATIONS - Reference to a technical society, institution, association, code, or governmental authority may be made in these Specifications in accordance with the following abbreviations:

AA	Aluminum Association
AASHTO	American Association of State Highway & Transportation Officials (Formerly AASHO)
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASTM	American Society for Testing & Materials
AWS	American Welding Society
AWWA	American Water Works Association
BOCA	Building Officials and Code Administrators International, Inc.
CRSI-WCRSI	Concrete Reinforcing Steel Institute
CS	U.S. Department of Commerce, Commercial Standard
EPA	United States Environmental Protection Agency
FS or Fed. Spec.	Federal Specification
MIL	Military Specifications
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Assoc.
NFPA	National Fire Protection Association
PS	U.S. Department of Commerce, Product Standard
SPR	U.S. Department of Commerce, Simplified Practice Recommendations
SSPC	Steel Structures Painting Council
UL	Underwriter's Laboratories, Inc.
ODEQ	Oklahoma Department of Environmental Quality
ODOT	Standard Specifications for Highway Construction - Oklahoma Department of

ODH-0587	Transportation Standards for Water Pollution Control Facilities - Oklahoma Department of Health Bulletin No. 0587
ODH-0589	Standards for Public Water Supply Facilities - Oklahoma Department of Health Bulletin No. 0589

END OF SECTION

## **SECTION 01200 - PROJECT MEETINGS**

### **PRE-CONSTRUCTION CONFERENCE**

Refer to General Conditions, Paragraph 2.8. Attend a Pre-Construction Conference at a time and place designated by the Engineer.

### **JOBSITE PROGRESS MEETINGS**

Attend periodic jobsite meetings at intervals to be determined at the Pre-Construction Conference, for the purpose of reviewing, scheduling and coordinating Project progress, as well as other matters of general interest to the Project.

Notify Engineer and all major subcontractors involved of work to be discussed at each meeting. Keep written record of the minutes of each meeting, and make record available for review by any person attending each meeting, and by the Engineer and Owner whether or not present at any meeting.

**END OF SECTION**

## **SECTION 01300 - SUBMITTALS**

### **PART I - GENERAL**

#### **CONSTRUCTION SCHEDULE**

1.1 Refer to General Conditions, Paragraph 2.6.1, for initial schedule requirements. Submit periodic updates as necessary to reflect any deviations of actual progress from initial schedule.

1.2 Prepare schedule in format approved by the Engineer and compatible with complexity of Project to illustrate the relationship of major work activities.

1.3 Minimum requirements will be horizontal bar chart on monthly time scale, with separate activities conforming to major divisions of the Specifications. Projected percentage completion of each activity and cumulative total of all activities should be shown for the first day of each month throughout the projected Contract duration.

1.4 Progress Payments may be withheld until the Contractor submits a schedule that truly represents the current status of the project.

#### **INSURANCE CERTIFICATES**

1.4 Refer to General Conditions, Paragraph 5.3.2, for submittal requirements. Submit updated certificates as necessary to verify current coverage.

#### **PROJECT DATA SUBMITTAL SCHEDULE**

1.5 Refer to General Conditions, Paragraph 2.6.2, and General Requirements, Section 01600. List all anticipated submittals of project data as required by the Contract Documents and such additional data as considered necessary by the Contractor. Show proposed submittal dates for each so that Engineer may schedule timely review of submittals. Update monthly to reflect current status.

#### **SCHEDULE OF VALUES**

1.6 Refer to General Conditions, Paragraph 2.6.3 for requirements. Where payment is to be based on unit bid prices, correlate schedule of values with bid items. Where payment is to be based on fixed price, correlate schedule of values with Divisions and Sections of Specifications. If separate payment is to be requested for materials suitably stored but not installed, segregate delivered costs, including taxes from installation costs including overhead and profit.

### **PART II - SHOP DRAWINGS, SAMPLES AND PRODUCT DATA**



2.1 GENERAL - Refer to General Conditions, Paragraphs 6.24 through 6.25 for responsibilities. Submittals on component parts forming a system, or that are interrelated, shall be submitted at one time as a single submittal in order to demonstrate that the items have been properly coordinated and will function as a unit.

2.1.1 Shop Drawings - Identify details by reference to sheet and detail numbers shown on Contract Drawings. Use same symbols wherever practicable. Reproductions of Contract Drawings are acceptable as shop drawings only when specifically authorized in writing by the Engineer.

2.1.2 Samples - Includes all required physical examples to illustrate materials, equipment or workmanship, which establish standards by which completed work is judged. Must be of sufficient size and clarity, and in sufficient quantity to clearly illustrate functional characteristics and full range of colors, patterns, textures or other properties which will be actually produced.

2.1.3 Product Data - Includes manufacturer's schematic drawings, catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, test reports, certificates of compliance, and other descriptive data not included on shop drawings. Modify standard descriptive data to delete information which is not applicable, and clearly identify pertinent data.

2.2 SUBMISSION REQUIREMENTS - Submittals shall be made with a letter of transmittal to the Engineer by the Contractor, and **not** by subcontractors, suppliers or manufacturers.

2.2.1 Submit one reproducible (SEPIA) transparency and one opaque print of each Shop Drawing, size not to exceed 24" x 36". Engineer will return reproducible showing approval or exceptions.

2.2.2 Submit samples in number specified, or if not so specified, in triplicate.

2.2.3 Submit Project Data in sufficient quantity for required distribution and record, allowing two copies to be retained by Engineer.

2.2.4 Identify all submittals with the following information, as applicable:

Project title and Engineer's project number.

Name of Contractor, Engineer, originating subcontractor or supplier.

Submittal date, and all revision dates.

Identify each product or material submittal by reference to specification section and page no., drawing no., or any other contract document reference applicable thereto.

Applicable conformance standards.

Include certification of Contractor review and conformity to contract requirements per General Conditions, Paragraph 6.25. Identify any deviations from Contract Documents. Provide 3" x 3" minimum space for Engineer's review stamp.

2.3 TAXES - Refer to Supplemental Conditions for responsibilities.

### **PART III - PROJECT RECORD DOCUMENTS**

3.1 MAINTENANCE OF DOCUMENTS - Maintain at jobsite one record copy of Contract Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other modifications to the Contract, field test records and other approved documents submitted by Contractor in compliance with specification requirements.

3.1.1 Maintain documents at the project apart from documents used for construction. Do not use record documents for construction purposes. Maintain documents in clean, legible condition. Make documents available at all times for inspection of the Engineer and Owner.

3.2 RECORDING - Label each document "PROJECT RECORD COPY" in 2" high printed letters. Keep record documents current. Do not permanently conceal any work until required information has been recorded.

3.3 CONTRACT DRAWINGS - Legible mark most appropriate drawing to record, where applicable:

- Depths of various elements of foundation in relation to first floor level.
- Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
- Location of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of structure.
- Field changes of dimension and detail made during construction process.
- Changes made by Change Order or Field Order.
- Details not on original Contract Drawings.
- Any change in location of facilities. Use City Survey Control System.

3.4 SPECIFICATIONS AND ADDENDA - Legibly mark up each Section to record:

- Manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
- Changes made by Change Order or Field Order.
- Other matters not originally specified.

3.5 SHOP DRAWINGS - Maintain as record drawings. Legibly annotate shop drawings to record changes made after review. Use red felt tip marking pen for all recording.

3.6 SUBMITTALS- At completion of project, deliver record documents to the Engineer. Accompany submittal with transmittal letter, in duplicate, containing:

- Date, project title and number.
- Contractor's name and address.
- Title and number of each record document.
- Certification that each document as submitted is complete and accurate.
- Signature of Contractor or his authorized representative.

END OF SECTION

## **SECTION 01400 - QUALITY CONTROL BY CONTRACTOR**

### **PART I - TESTS AND INSPECTIONS**

1.1 Refer to General Conditions, Article 13

1.2. The Contractor will employ and pay for the services of a qualified independent testing consultant, approved by the Owner and Engineer, to perform specified testing services for the following:

Soils Compaction Control	Section 02200 & 02220
Cast-In-Place Concrete	Section 03300
Concrete Pavement	Section 02650
Asphalt Paving	Section 02510

1.2.1. Refer to the sections above for specific requirements concerning compaction density, concrete strength and other in place strength requirements. Testing not specified herein will be done at the expense on the Owner.

1.2.2. The Contractor will arrange for the performance, and pay all costs in connection therewith, all other tests and inspections required by the Contract Documents. Tests will be performed by independent consultants retained by the Contractor, not by the Contractor himself.

### **PART II - REQUIREMENTS FOR INDEPENDENT TESTING CONSULTANTS**

2.1. QUALIFICATIONS - Comply with "Recommended Requirements for Independent Laboratory Qualifications," latest edition, published by the American Council of Independent Laboratories, and basic requirements of ASTM E329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction," latest edition.

2.1.1. Submit to Engineer, for prior approval, name and address of a proposed testing consultant with description of personnel, facilities, equipment and other qualification data, including:

2.1.2. Report of inspection of facilities made by Materials Reference Laboratory of the National Bureau of Standard's during most recent tour of inspection, with a memorandum of remedies of any deficiencies reported by the inspection.

2.1.3. Certificates of calibrations of applicable testing equipment made by an accredited calibration agency within 12 months prior to a submittal date.

2.1.4. Testing agencies will be instructed to submit directly to Engineer, three (3) copies of all reports of tests or inspections made, showing compliance, irregularities or deficiencies, identifying project, date of test, location in project, applicable specification section, applicable standard(s) for

compliance, observations relating to compliance, name and signature of an inspector.

### **PART III - CONTRACTOR RESPONSIBILITIES**

3.1 RESPONSIBILITIES - Furnish above qualification data and expedite submittal when testing consultant is employed by the Contractor. Provide access to the work and furnish casual labor and facilities to accommodate inspections and tests. When tests fail to meet specified requirements, Contractor will arrange for retesting after conditions have been corrected. Conduct such retesting at no additional expense to the Owner.

3.2 Number of Test – The number of requires test will be determined by dividing the “Quantity of Item Represented by one Test” into the quantity used on the project. Fractional numbers of tests shall be converted to the nearest whole number.

3.2.1 Density Testing - There will be a minimum of two (2) test per job for any category listed below. The following schedule will apply to all quality control testing.

3.2.2 If minimum compaction requirements are not met as determined by these tests, Contractor will recompact to the specified compaction. Such recompaction will extend to 1.5 times the area specified above surrounding the point of the failed test. Remedial compaction and retesting will be conducted at no additional expense to the Owner.

3.2.3 Additional Test – The Engineer may order tests in addition to the number provided for in the schedule if in his opinion, such additional tests are necessary. The cost of all tests ordered in addition to the number of satisfactory tests shall be paid for by the Contractor.

3.3 CONCRETE TESTING - The Contractor will be responsible for providing a slump cone at the site. This requirement will be for major pours on concrete pavements or foundation slabs.

3.3.1 Testing Schedule - Concrete Cylinders: A minimum of three (3) cylinders will be taken for a single representative sample of the product being furnished. The first sample will be broken seven (7) days from the date of the sample. The second cylinder will be broken twenty-eight (28) days from the date of the sample.

## **Testing Methods & Frequency**

<b>Description</b>	<b>Method of Test (Latest Version)</b>	<b>Quantity of Item represented by one test</b>
<b><u>Sub-grade (Soil Classification)</u></b>		
A. Preparation of Soil Mechanical Analysis	AASHTO T-87	1,200 S.Y. of Sub-grade or Select Soil
B. Mechanical Soil Analysis	AASHTO T-88	Same
C. Liquid Limit of Soil	AASHTO T-89	
D. Plastic Limit and Plastic Index	AASHTO T-90	Only 1 Test fir additive treated sub-grade design unless change in soil class
E. Soil Classification	Group Index Method	
Standard Proctor Density	AASHTO T-99	1,200 S.Y. of Sub-grade unless a change in soil class
<b><u>Field Density</u></b>		
A. Sub-grade	AASHTO T-191 or T-205	650 S.Y. of Sub-grade
B. Trench Under Paving	Same	200 L.F. of trench or at any transverse crossing
C. Embankment	Same	Each 9" Layer of 650 S.Y. of sub-grade
<b><u>Asphalt Paving</u></b>		
A. Sampling, Extraction and Gradation	ASSHTO T-168 ASSHTO T-30 ASSHTO T-164	650 S.Y. of paving surface for each course and change in type of mix
B. Field Density	ASSHTO T-166 ASTM D-188-71 ASTM D-2726-73 ASTM D-2950-81	650 S.Y. of paving surface for each course and change in type of mix
C. HVEEM Stability	ODOT Lab Method	Only 1 test unless a change in AC Source or mix type
<b><u>Aggregate Base</u></b>		
A. Sampling Gradation	ODOT Stds.	1,200 S.Y. of Aggregate Base or 200 C.Y. of Agg. Base
B. Field Density	ODOT Stds.	650 S.Y. of Agg. Base
<b><u>Curb and Gutter</u></b>		
A. Concrete Cylinders (Curb & Gutter)	ASSHTO T-23	200 L.F. of Curb
	ASTM C-173 or C-231	1 Test for entrained air content shall be made for each set of

City of Muskogee

<b>Description</b>	<b>Method of Test (Latest Version)</b>	<b>Quantity of Item represented by one test</b>
B. Concrete Paving	ASSHTO T-23	four concrete test cylinders or test beams cast. 1 Test for each 100 C.Y. of Concrete poured.

**Structural Concrete for  
Structure**

A. Concrete Cylinders	AASHTO T-23	For each curb inlet, Junction Box, Area Inlet, End Sections
B. Slump	ASTM C143-00	
C. Air Content	ASTM C231-97	
D. Temperature	ASTM C1064-99	

AASHTO – American Association of State Highway & Transportation Officials

ASTM – American Society for Testing Materials

ODOT – Oklahoma Department of Transportation

END OF SECTION  
Revised March 2005

## **SECTION 01600 - MATERIAL AND EQUIPMENT**

### **PART I - PRODUCTS LIST**

1.1 Within 30 days after date of Contract, submit to Engineer five copies of a complete list of all products which are proposed for installation. Tabulate list by, and be complete for, each Specifications Section. Include with listing of each product the name and address of manufacturer, trade name, model or catalog designation, reference standard, manufacturer's performance and test data, and subcontractor, as applicable.

1.2 REFERENCE STANDARDS - Reference in the Specifications to standard specifications or publications or technical societies or governmental agencies, such as ASTM, ANSI, AISC, ACI, AWS, Federal Specifications, or Commercial Standards will refer to latest edition adopted and published 30 days prior to receiving bids, unless specifically noted otherwise in the Contract Documents. It will be understood that all manufacturers, producers and their agents, of materials required will have such reference standards available for reference and be fully familiar with their requirements as pertains to their product, material or equipment.

1.2.1 In case of conflict between reference standards and Project Specifications, Project Specifications will govern. In case of conflict between reference standards and codes, the one having the more stringent requirements will govern.

1.3 MANUFACTURER'S INSTRUCTIONS - Refer to General Conditions, Paragraph 6.5. Contractor will obtain and distribute necessary copies of manufacturer's instructions, including two copies to the Engineer. If a conflict exists between the manufacturer's instructions and the Contract Documents, notify the Engineer in writing and obtain his instruction prior to proceeding.

1.4 PRODUCT DELIVERY, STORAGE AND HANDLING - Deliver materials, products and equipment to the project site in undamaged condition in manufacturer's original, unopened containers or packaging with identifying labels intact and legible. Arrange deliveries in accordance with the Construction Schedule and in ample time to facilitate inspection prior to installation to avoid unnecessary delays in the construction process.

1.4.1 Store and handle products as prescribed by manufacturer or as specified in the Contract Documents in a manner to protect from damage by moisture, weather, abuse or construction operations.

**END OF SECTION**



## **SECTION 01700 - PROJECT CLOSEOUT**

### **PART I - GENERAL**

1.0 Refer to General Conditions, Article 14, for responsibilities and procedures with respect to completion and Final Inspection of the work.

### **SUBMITTALS**

1.2 GENERAL - Submit with or prior to Application for Final Payment, Consent of Surety to Final Payment and remaining releases, waivers, guarantees and all project data required by the Contract Documents.

1.3 PROJECT RECORD DOCUMENTS - Refer to Section 01300 - SUBMITTALS, for responsibilities and procedures for submittal of information required. Contractor will notify Engineer in writing that certified copies of results for all earth compaction tests and concrete cylinder tests conducted have been submitted. The letter will include a summary list of all tests conducted showing date and location.

### **PART II - POST CONSTRUCTION INSPECTION**

2.0 Prior to expiration of one year from Date of Substantial Completion the Engineer will make visual inspection of the project in company with the Owner to determine whether correction of defective work is required. The Contractor may be required to attend such inspection if requested by Engineer.

2.1 Any corrective work required within one year from Date of Substantial Completion will be performed by the Contractor at no additional expense to the Owner.

**END OF SECTION**