



740 SW 24th Street
Suite 200
Moore, OK 73160
TEL 405.329.2555
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www.GarverUSA.com

ADDENDUM NO. 1

Date: 12/29/2025
Project Name: Moore WWTP Digester Building Removal Project
Owner: City of Moore
Owner Project No.: 2026-004
Garver Project No. 2500545

This addendum shall be a part of the Plans, Contract Documents and Specifications to the same extent as though it were originally included therein, and it shall supersede anything contained in the Plans, Contract Documents, and Specifications with which it might conflict. This addendum, including all attachments, shall become part of the Contract and all provisions of the Contract shall apply thereto. The time provided for completion of the Contract has not been changed as noted in this addendum. Acknowledgement of receipt of this addendum must be noted in the appropriate section of the Bid Form and included with the Contract Documents.

A. SPECIFICATIONS –

1. Remove the following specifications sections in their entirety, and replace with the same, attached hereto:
 - a. DIVISION 00 – BIDDING AND CONTRACTING REQUIREMENTS
2. Add the following specification section in its entirety, attached hereto:
 - a. 01 33 00 – Submittal Procedures

By: _____

Michael Nguyen, P.E.
Project Manager



ADDENDUM NO. [1]

Attachments:

A. Specifications

1. DIVISION 00 – BIDDING AND CONTRACTING REQUIREMENTS
2. 01 33 00 – Submittal Procedures

END OF ADDENDUM NO. 1

PART 1
BIDDING REQUIREMENTS

CONTRACT DOCUMENTS AND
TECHNICAL SPECIFICATIONS
FOR

Moore WWTP Digester Building Removal
BID No. 2026-004
OWRB Loan No.: ORF-26-0048-CW

CITY OF MOORE

CLEVELAND COUNTY, OKLAHOMA

SET NO.:

DATE: # December 2025

PREPARED BY:
City of Moore
City Manager's Office

CONTRACT DOCUMENTS

AND

TECHNICAL SPECIFICATIONS

FOR

Moore WWTP Digester Building Removal

BID No. 2026-004

OWRB Loan No.: ORF-26-0048-CW

for

CITY OF MOORE

CLEVELAND COUNTY, OKLAHOMA

Prepared by:

Garver
750 SW 24th Street
Suite 200
Moore, OK 73160

Approved: # December 2025

Mark Hamm, Mayor

Brooks Mitchell, City Manager

<h1 style="text-align: center;"><u>Notice to Bidders</u></h1> <p style="text-align: center;"><i>Public Construction Contract</i></p>		Date of Notice: # Dec 15, 2025	Date Documents Available: # Dec 15, 2025
SUBMISSION LOCATION & TIME: BY 1:30 P.M. # January 6, 2026 Purchasing Agent, Moore City Hall, Suite 142 301 N. Broadway Moore, OK 73160 Phone: 405.793.5000			
Bid Opening: Date: # January 6, 2026, Time: 2:00 p.m. Location: 301 N. Broadway, Moore OK, City Council Chamber Room			
Project Title: Moore WWTP Digester Building Removal BID NO. 2026-004			
Bid Instructions: Bids timely filed with the Purchasing Agent shall be publicly opened and read aloud at the time and location specified as bids above. Bids received more than ninety-six (96) hours, excluding Saturdays, Sundays and holidays, before the time set for opening of bids, as well received after the time set for opening of bids, will not be considered and will be returned unopened. Within sixty (60) days from the bid opening date, the successful bidder shall execute a written contract embodying all provisions of the bidding documents.			
For Technical Information, contact: Michael Nguyen Project Manager Phone Number: 405.666.2827			
Description of Work: Removal of Digester Building and Odor Ducts Removal and Capping			
Estimated Cost Range of Project:		Time for Project Completion:	*Wage Rates:
From: \$500,000	To: \$650,000	60 Calendar Days	Yes
Plans, Specs & Bidding Documents are Available at the Garver Planroom Quest No.: 9979087 https://planroom.garverusa.com Hard Copies may be viewed at: Garver (8:00 a.m. to 5:00 p.m. Monday through Friday) 750 SW 24th Street SUITE 200 Moore, OK 73160 Phone: 405.666.2827 Email: MTNguyen@GarverUSA.com			Deposit for hard copies of the Plans & Specifications: N/A
Mandatory Prebid Conference			
Location: 4000 S I-35 Service Rd Moore, OK 73160 WWTP Main Office		Time: 1:30:00 p.m. Date: 29 December 2025	Attendance Mandatory YES
Bid Bond: A cashier's check, a certified check, or a surety bond in the amount of five percent (5%) of the bid shall accompany the sealed proposal of each bidder. Deposits will be returned to the unsuccessful bidders. Deposits will be returned to successful bidder upon execution of contract documents.			
*Bids shall also be made in accordance with the prevailing hourly rate of wages for this locality and project as determined by the Commission of Labor and filed with the Secretary of State in accordance with the provisions of 40 O.S. 1971, 197.1-17, which prevailing hourly rate of wages is made a part of this notice by reference as though fully set forth herein.			
Equal Opportunity in Employment: All qualified applicants will receive consideration for employment without regard to race, color,			

religion, sex, national origin, age or physical handicap. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

Davis Bacon Act wage rules shall apply. All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code and 29 CFR parts 1,3, and 5. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting. For more information please refer to Oklahoma Water Resources Board Supplemental Conditions, ORF-185 as well as <http://www.beta.sam.gov/>.

American Iron and Steel provisions also apply to projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to P.L. 113-76, Consolidated Appropriations Act, 2014, Sec. 436 requires that "None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States." For more information please refer to Oklahoma Water Resources Board Supplemental Conditions ORF-185.

This project is subject to Build America, Buy America (BABA) Act requirements. The BABA Act requires none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The BABA Act requirement does not supersede the AIS requirement, and both provisions still apply and work in conjunction. By submitting a bid/proposal under this solicitation, the Bidder certifies that all iron, steel, manufactured products, and construction materials for the project will meet the BABA requirements in the United States in accordance with the "Infrastructure Investment and Jobs Act, H.R. 3684.

Disbarment and Suspension: Bidders may not be debarred, suspended, or otherwise excluded from participation in the CWSRF under Executive Order 12549.

THE CITY COUNCIL OF THE CITY OF MOORE RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS.
CITY OF MOORE, OKLAHOMA By: Lira Deer, Purchasing Agent

B. SOLICITATION FOR BIDS

NOTICE is hereby given that the CITY OF MOORE, OKLAHOMA, will receive sealed bids at office of Purchasing Agent, Room 142, Moore City Hall, 301 N. Broadway, Moore, Oklahoma, 73160, until **1:30 o'clock P.M., Local Time, on the 6th day of January 2026**, for the construction of

Moore WWTP Digester Building Removal BID NUMBER. 2026-004

1. Bid Requirements.

- a. Bids shall be made in accordance and fully comply with

Solicitation for Bids
Requirements for Bidders
Bidder's Proposal
Plans and Specifications

and other bidding documents on file and available for examination at the Office of the Purchasing Agent in City Hall. These documents are made a part of this notice as though fully set forth herein.

- b. Bids may require compliance with the prevailing hourly rate of wages for this locality and project as determined by the Commission of Labor and filed with the Secretary of State, a copy of which is on file with the City Clerk, in accordance with the provisions of 40 Oklahoma Statute 1991, 196.1-196.14, which prevailing hourly rate of wages is made a part of this solicitation by reference as though fully set forth herein.
- c. A cashier's check, a certified check, or a surety bond in the amount of five percent (5%) of the bid shall accompany the sealed proposal of each bidder. Such deposits will be returned to the unsuccessful bidders.

2. Filing of Bids.

- a. Bids received more than ninety-six (96) hours before the time set for opening of bids, (excluding Saturdays, Sundays, and holidays), and bids received after the time set for opening of bids will not be considered and will be returned unopened.
- b. Bids timely filed with the City of Moore shall be publicly opened and read aloud in the City Council Chamber Room at City Hall immediately after the closing time above stated. No bidder may withdraw a bid within sixty (60) days after the actual

date of the opening thereof. Within sixty (60) days from the bid date, the owner may award a contract to the successful bidder or reject any or all bids for the project.

3. Obtaining Documents.

Complete digital sets of the Plans, Specifications and all other bidding documents may be obtained from the Garver's Planroom website under Quest No. 9979087 at, <https://planroom.garverusa.com>. Bidders may also contact Garver, 750 SW 24th, Suite 200 (phone 405.666.2827, email: MTNguyen@GarverUSA.com) to view hard copies.

4. A **Mandatory PRE-Bid Conference** will be held at **4000 S I-35 Service Rd**, Moore, Oklahoma at **1:30 p.m., Local Time, on 29 December 2025**.
5. Equal Opportunity in Employment: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or physical handicap. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

Davis Bacon Act wage rules shall apply. All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code and 29 CFR parts 1,3, and 5. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting. For more information please refer to Oklahoma Water Resources Board Supplemental Conditions, ORF-185 as well as <http://www.beta.sam.gov/>.

American Iron and Steel provisions also apply to projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to P.L. 113-76, Consolidated Appropriations Act, 2014, Sec. 436 requires that "None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States." For more information please refer to Oklahoma Water Resources Board Supplemental Conditions ORF-185.

This project is subject to Build America, Buy America (BABA) Act requirements. The BABA Act requires none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The BABA Act requirement does not supersede the AIS requirement, and both provisions still apply and work in conjunction. By submitting a

bid/proposal under this solicitation, the Bidder certifies that all iron, steel, manufactured products, and construction materials for the project will meet the BABA requirements in the United States in accordance with the “Infrastructure Investment and Jobs Act, H.R. 3684.

In the event of conflict between the Plans and Specifications, the latter shall govern.

In the event of conflict between the Specifications and SRF Supplemental Conditions, the latter shall govern.

Each bidder must fully comply with the requirements, terms and conditions of the Oklahoma Water Resources Board (OWRB), Small, Minority, Women's Businesses Requirements including affirmative steps to contract with small, minority and women's businesses during the performance of this contract. The bidder commits itself to the affirmative steps to contract with small, minority and women's businesses contained herein and all other requirements, terms and conditions of these bid conditions by submitting a properly signed bid. Requirements are contained in Oklahoma Water Resources Board Guidance and Procedures, ORF-267

Disbarment and Suspension: Bidders may not be debarred, suspended, or otherwise excluded from participation in the CWSRF under Executive Order 12549.

6. The City Council of the City of Moore reserves the right to reject any or all bids.

For the CITY OF MOORE, OKLAHOMA

BY: Lira Deer, Purchasing Agent

C. INFORMATION FOR BIDDERS

1. Receipt and Opening of Bids

The City of Moore (herein called the "Owner") invites bids on the forms attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the Owner at the Office of the Purchasing Agent, room 142 until **1:30 P.M., Local Time on 6 January 2026**, and then at 2:00 P.M. will be publicly opened and read aloud in the City Council Chamber, City Hall, at 301 N. Broadway, Moore, Oklahoma. The envelopes containing the bids must be sealed, addressed to the Purchasing Agent, 301 N. Broadway, Moore, Oklahoma, 73160, and designated as bid for the

Moore WWTP Digester Building Removal

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within sixty (60) days after the actual date of the opening thereof.

2. Preparation of Bid

Each bid must be submitted on the prescribed forms. All blanks and spaces for bid prices must be filled in, in ink or typewritten, in both words and figures, and the foregoing certifications must be fully completed and executed when submitted.

Bids and affidavits must be filed in sealed envelopes within the time limit for receiving proposals, as stated in the SOLICITATION FOR BIDS. Bid envelopes shall legibly bear the word "PROPOSAL" with the name of the Project. If forwarded by mail, the sealed envelope containing the bid **must** be enclosed in another envelope addressed as specified in the bid form. The original copy shall be filed with the CITY OF MOORE in the PURCHASING AGENT's office in the MOORE CITY HALL. All blank spaces in the proposal forms shall be correctly filled-in and the bidder shall state the prices, typewritten or written in ink, both in words and numerals, for which he proposes to do the work contemplated or furnish the materials required. All prices shall be distinctly legible.

3. Method of Bidding

The Owner invites the following bid(s): **Lump Sum**

4. Bid Surety

Each bid must be accompanied by cash, a cashier's check, a certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the

amount of five percent (5%) of the bid. Such cash, checks, or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the contract, or, if no award has been made within 60 days after the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

Proposals will not be considered unless the original filed with the City is accompanied by the described Bid Surety made payable to the City of Moore. The proposal guaranty is required as evidence of good faith and as a guarantee that, if awarded the contract, the bidder will execute the contract and furnish the required bonds.

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within ten (10) days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited provided with his bid.

5. Qualification/Disqualification of Bidders

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out contract requirements and complete the work contemplated therein. Conditional bids will not be accepted.

Bidders will be disqualified and their proposals not considered for any of the following specific reasons (These reasons are not all inclusive):

- a. Where more than one proposal for an individual firm, partnership, or corporation is filed under the same or different names; and where such proposals are not identical in every respect
- b. Reason for believing that collusion exists among the bidders
- c. Reasonable grounds for believing that the bidder holds interest in more than one proposal for the work contemplated or materials to be furnished
- d. Incomplete work that, in the judgment of the City, will hinder or prevent the prompt commencement or completion of this project

6. Power of Attorney

Attorneys-in-fact who sign bid bonds or contract bonds must submit with each bond a certified and effectively dated copy of their power of attorney.

If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent and his post office address given. If the proposal is submitted by a firm or

partnership, the name and post office address of each member of the firm must be given with the proposal signed by a duly authorized member of the firm or partnership. If the proposal is made by a company or corporation, the state in which the company or corporation is chartered, and business address must be given; and the proposal must be signed by a duly authorized official or agent. Powers of Attorney, authorizing agents, or others to sign proposals must be properly certified and on file with the City Clerk.

7. Time of Completion and Liquidated Damages

The Contractor hereby agrees to commence work under the Contract on a date specified in a written "Notice to Proceed" of the Owner, and to fully complete the project within **60 consecutive calendar days**. The Contractor further agrees to pay as liquidated damages, the sum of **Five Hundred Dollars and 00/100 (\$500.00) for each consecutive calendar day** thereafter as provided in the Contract and General Conditions.

8. Rejection of Proposals

The City reserves the right to reject any or all proposals submitted, all of which are subject to this reservation. Proposals shall be rejected for any of the following specified reasons (These reasons are not all inclusive):

- a. Proposals received after the time limit stated in the solicitation
- b. Proposal prices obviously unbalanced
- c. Proposals that are incomplete insofar as the Non-Collusion Affidavit, required signatures, or containing any irregularities of substance

9. Notice of Award

The Owner will make every reasonable attempt to award the contract within ten (10) days of the bid opening date but reserves the right to examine all the bids in their entirety and to take whatever time may be required, in the best interest of the Owner, to accomplish a complete and fair bid analysis.

10. Method of Award - Lowest Responsible Bidder

Award of contract will be made by the City Council, upon recommendation of the City Manager, to the lowest responsible bidder submitting a responsive bid and meeting the requirements of the City. The Owner may reject all bids or may award the contract with any selected alternatives based upon available funding.

11. Cancellation of Award

The City reserves the right to cancel the award of any contract at any time before the execution of said contract without liability against the City.

12. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall not relieve any bidder from any obligation in respect of his bid.

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of the contract. Insofar as possible, the contractor must employ methods or means that will not cause any interruption of or interference with the work of any other contractor.

All bidders, by submittal of a proposal, represent that they have examined the site prior to submittal and are fully informed regarding facilities and conditions affecting work, costs, risks, and obligations to be met, regardless of any omissions of the plans or specifications.

Any neglect or failure on the part of the bidder to obtain reliable information regarding the conditions to be encountered shall not relieve the successful bidder from any risks or liabilities or from the responsibility for the completion and acceptance of the project.

13. MANDATORY Pre-Bid Conference

A Mandatory Pre-Bid Conference will be held at 4000 S I-35 Service Rd, Moore, OK, at **1:30 p.m. on 29 December 2025.**

14. Addenda and Interpretations

No interpretation of the means of the plans, specifications, or other pre-bid documents will be made to any bidder orally.

Each written request for such interpretation should be addressed to the project's engineering company, Garver. Requests for Information shall be sent to the Project Manager, Michael Nguyen, MTNguyen@GarverUSA.com and copied to jihler@cityofmoore.com. To be given consideration, each such request must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be posted to the City of Moore's web site 48 hours prior to the bid opening deadline. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so listed shall become part of the contract documents.

15. Security for Faithful Performance

The Contractor shall deliver the executed contract and all required surety bonds within ten (10) days upon receipt of the contract from the Owner. With the execution and delivery of the Contract, the Contractor shall furnish and file with the City in the amounts herein required, the surety bonds listed below. The surety on such bonds shall be a duly authorized surety company satisfactory to the Owner.

- a. A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the approximate total amount of the Contract, guaranteeing the full and faithful execution of the work and performance of the Contract and for the protection of the City and all property owners interested against any improper execution of the work or the use of inferior materials.
- b. A good and sufficient Statutory Bond in an amount equal to one hundred percent (100%) of the approximate total amount of the Contract, guaranteeing payment for all labor, materials, and equipment used in the construction of the project.
- c. A good and sufficient Maintenance Bond in an amount equal to one hundred percent (100%) of the total amount of the Contract, guaranteeing the maintenance in good condition of such project for a period of two (2) years from and after the time of its completion and acceptance by the City.

No surety will be accepted who is in default or delinquent on any bond or who holds interest in any litigation against the City. All bonds shall be made on forms furnished by the City and shall be executed by surety companies licensed to do business in the State of Oklahoma and shall conform to the requirements as set forth herein. Each Bond shall be executed by the Contractor and the Surety.

Should any surety on the Contract be determined unsatisfactory at any time by the City, notice will be given to the Contractor to that effect; and the Contractor shall forthwith substitute a new Surety or Sureties satisfactory to the City. No payment will be made under the Contract until the new Surety or Sureties, as required, have qualified and have been accepted by the City. The Contract shall not be operative, nor shall any payments be due until approval of the bonds has been made by the City.

16. Laws and Regulations

The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though herein written out in full.

17. Sales Tax Exemption

Pursuant to Oklahoma Statutes, Title 68, 1356(10), Contractors and Subcontractors shall be exempted from the tax levied on the sale of tangible personal property or services necessary for the completion of this construction contract. Any Contractor or Subcontractor making purchases for this contract on behalf of the City of Moore shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that the purchases are made for and on behalf of the City of Moore.

Contractors and Subcontractors shall request a written Sales Tax Exemption by contacting the Purchasing Department, City of Moore, 301 N. Broadway, Moore, Oklahoma, 73160, Ph. 405.793.5022, who will issue such exemption on an individual project basis. It shall be the Contractor's and Subcontractor's responsibility to secure the Sales Tax Exemption, and failure to do so will not lessen their liability for payment of the sales tax.

Two Tax Commission interpretations of the Oklahoma statutes Title 68, 1356(10) are listed below to avoid contention among the City of Moore, its contractors, and the Tax Commission:

"Exemptions apply to materials permanently incorporated into the project, but not to concrete forms nor to other tools."

"The same reasoning precludes exceptions being applied to rental items."

The Contractor shall certify that purchases are made for or are on behalf of the City of Moore. Persons who make wrongful or erroneous certification(s) shall be guilty of a misdemeanor and shall be punished as provided in the statutes.

18. Safety Standards and Accident Prevention

With respect to all work performed under this contract, the Contractor shall:

- a. Comply with the safety standard provisions of applicable laws, building and construction codes, and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), and the requirements of Title 29 of the Code of Federal Regulations.
- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c. Maintain as required by OSHA standards, all required articles necessary for giving first aid to the injured.

19. Access to Site

Access to the site is illustrated on the location map. It shall be the Contractor's responsibility to determine restrictions, if any, as to loads, bridge and road clearances, channel depths, and private property limitations that may influence access to the site.

20. Notice of Special Conditions

Attention is particularly called to those parts of the contract documents and specifications which deal with the following:

- a. Time for Completion and Liquidated Damages
- b. Wage rates and Insurance Requirements
- c. Inspection and Testing of Materials
- d. Stated allowances

21. Payments to Contractor

The Owner will make progress payments to the Contractor no more than once per month upon request of the Contractor. Pay requests take approximately 3-4 weeks to process.

Such payment will be made on the basis of an agreed estimate of work performed since the previous pay request, provided that the Contractor and the City Manager shall have previously come to an agreement as to the amount of the request prior to submission.

The City shall retain 5% of the amount of each estimate until the project is complete.

D. BID DOCUMENTS

1. CONTRACTOR'S CHECKLIST OF REQUIRED ITEMS

Completed*

- | | | |
|----|---|-------|
| 1. | Bid Proposal | _____ |
| 2. | Bid Bond | _____ |
| 3. | Anti-Collusion Affidavit | _____ |
| 4. | Business Relationships Affidavit | _____ |
| 5. | Experience and Capability Questionnaire | _____ |
| 6. | CWSRF Documents | _____ |

*Check when filled out, signed, and included with submission of bid packet.

2.BID PROPOSAL

Date: _____

The Honorable Mayor and City Council
City of Moore
301 N. Broadway
Moore, Oklahoma 73160

RE: Proposal of _____ (hereinafter called "Bidder") a corporation/partnership/individual (strike out inapplicable term) organized and existing under the laws of the State of _____.

Gentlemen:

The Bidder, in compliance with your invitation for bids for the construction of

**Moore WWTP Digester Building Removal
BID NO. 2026-004**

having examined the Plans and Specifications with related documents and the site of the proposed work and being familiar with all of the conditions surrounding construction of the proposed project (including availability of material and labor), hereby proposes to furnish all labor, materials, and supplies to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this Proposal will be made a part.

Bidder hereby agrees to commence work under this contract on a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within **60 consecutive calendar days** thereafter as stipulated here in. Bidder further agrees to pay as liquidated damages the sum of **500 and 00/00 Dollars (\$500.00) for each consecutive calendar day** thereafter that the Contract is not completed as provided in the General Conditions.

Bidder acknowledges receipt of the following Addenda:

Bidder agrees to perform all of the construction work described in the Specifications and shown on the Drawings for the following **Lump Sum**:

BID SCHEDULE
Moore WWTP Digester Building Removal
BASE BID

ITEM #	EST. QTY.	UNIT	DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	1	L.S.	All Work as defined in the Contract Documents	\$ N/A	\$
Unit Price In Words Dollars					
TOTAL AMOUNT BID		\$			
Total Amount Bid In Words		Dollars			

Amounts are to be shown in both words and figures. In case of any discrepancy, the amount shown in words will govern.

The above unit prices shall include all costs for labor, materials, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

Equal Opportunity in Employment: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or physical handicap. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

Davis Bacon Act wage rules shall apply. All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code and 29 CFR parts 1,3, and 5. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting. For more information please refer to Oklahoma Water Resources Board Supplemental Conditions, ORF-185 as well as <http://www.beta.sam.gov/>.

American Iron and Steel provisions also apply to projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to P.L. 113-76, Consolidated Appropriations Act, 2014, Sec. 436 requires that "None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States." For more information please refer to Oklahoma Water Resources Board Supplemental Conditions ORF-185.

This project is subject to Build America, Buy America (BABA) Act requirements. The BABA Act requires none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The BABA Act requirement does not supersede the AIS requirement, and both provisions still apply and work in conjunction. By submitting a bid/proposal under this solicitation, the Bidder certifies that all iron, steel, manufactured products, and construction materials for the project will meet the BABA requirements in the United States in accordance with the "Infrastructure Investment and Jobs Act, H.R. 3684.

Disbarment and Suspension: Bidders may not be debarred, suspended, or otherwise excluded from participation in the CWSRF under Executive Order 12549.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informality in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of acceptance of this bid, Bidder will execute the formal Contract attached within ten (10) days and deliver all bonds as required by the General Conditions. The bid security attached in the sum of _____ DOLLARS (\$_____) is to become the property of the Owner in the event the Contract and Bonds are not executed within the time set forth above, as liquidated damages for the delay and additional expense to the Owner caused thereby.

RESPECTFULLY SUBMITTED,

By: _____

Title: _____

Address: _____

3. BID BOND

The Bidder shall provide the Bid Bond by the means of a cashier's check, a certified check, or a surety bond in the amount of five percent (5%) of the bid.

4. ANTICOLLUSION AFFIDAVIT

The following affidavit is submitted by Bidder as a part of this bid and proposal:

STATE OF OKLAHOMA }
CLEVELAND COUNTY }

The undersigned deponent, of lawful age, being duly sworn, upon his oath, deposes and says that:

- he has lawful authority to execute the within and foregoing proposal;
- he has executed the same by subscribing his name hereto under oath for and on behalf of said bidder;
- bidder has not, directly or indirectly, entered into an agreement; expressed or implied, with any bidder(s) having as its object controlling of the price or amount of such bid(s), the limiting of the bids or the bidders, the parceling or farming out to any bidder(s) or other persons of any part of the contract or any part of the subject matter of the bid(s) or of the profits thereof; and
- he has not and will not divulge the sealed bid to any person whomsoever, except those having a partnership or other financial interest with him in said bid(s) until after the said sealed bid(s) are opened.

Deponent further states that:

- the bidder has not been a party to any collusion among bidders or prospective bidders in any restraint of freedom of competition by agreement to bid at a fixed price, or to refrain from bidding;
- the bidder has not been a party to any collusion with any City official or employee as to quantity, quality, or price in the prospective contract, or any other terms of said prospective contract;
- the bidder has not been in any discussions between bidders and any City official concerning exchange of money or other thing of value for special consideration in the letting of a contract;
- the bidder has not paid, given, or donated or agreed to pay, give, or donate to any officer or employee of the CITY OF MOORE any money or other thing of value, either directly or indirectly, in the procuring of the award of contract pursuant to this bid.

SIGNED: _____
(Name of Bidder)

BY: _____

Title: _____

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

Notary Public

My Commission Expires: _____

5. BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF OKLAHOMA }

CLEVELAND COUNTY }

_____, of lawful age, being first duly sworn, on oath says that he is the agent authorized by the bidder to submit the attached bid. Affidavit 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 date 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 to 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 hereinabove mentioned exist, affiant should so state.)

Signed: _____

By: _____

Title: _____

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

Notary Public

My Commission Expires:

6. EXPERIENCE AND CAPABILITY QUESTIONNAIRE

_____, 2026

The Honorable Mayor and City Council
City of Moore
301 N. Broadway Street
Moore, Oklahoma 73160

Gentlemen:

Re: Moore WWTP Digester Building Removal, Project No. 2026-004

The following information is submitted in answer to the questions listed below:

1. How many years experience as a general contractor have you had in construction similar to the project upon which the attached proposal is submitted?

2. If you have constructed similar projects, list at least three contracts, giving name and location of each project, amount and date of contract, and the owner or agency for whom the work was performed (list only prime contracts).

3. What is the largest project you have ever undertaken as the Prime Contractor? Give location, amount, and date of contract, type of construction, etc.

4. Have you ever failed to complete a contract or been involved in litigation regarding the acceptance of final settlement for work performed? _____. If the answer is "Yes", explain fully.

5. If you are the successful bidder on this project, do you propose to sublet or assign the project or any part thereof to some other contractor?

6. Is your organization an established business, with construction equipment and personnel ready to start work on this project if you are the successful bidder?

7. List all the projects that you have under contract this date, upon which final acceptance has not been made, giving the following information:

CONTRACT NO. 1

Name of Project _____

Owner _____ Location _____

Amount of Contract _____ Date of Contract _____

Time Allowed for Construction _____

Percent of Time Elapsed _____

Percent of Work Actually Accomplished _____

Has there been any litigation? _____

If answer to above question is "Yes", explain fully:

CONTRACT NO. 2

Name of Project _____

Owner _____ Location _____

Amount of Contract _____ Date of Contract _____

Time Allowed for Construction _____

Percent of Time Elapsed _____

Percent of Work Actually Accomplished _____

Has there been any litigation? _____

If answer to above question is "Yes", explain fully:

CONTRACT NO. 3

Name of Project _____

Owner _____ Location _____

Amount of Contract _____ Date of Contract _____

Time Allowed for Construction _____

Percent of Time Elapsed _____

Percent of Work Actually Accomplished _____

Has there been any litigation? _____

If answer to above question is "Yes", explain fully:

CONTRACT NO. 4

Name of Project _____

Owner _____ Location _____

Amount of Contract _____ Date of Contract _____

Time Allowed for Construction _____

Percent of Time Elapsed _____

Percent of Work Actually Accomplished _____

Has there been any litigation? _____

If answer to above question is "Yes", explain fully:

(Attach additional sheets if required)

8. We submit the following list of major construction equipment now owned by us and available for the work that may be awarded, which is in operating condition and good state of repair.

<u>No.</u>	<u>Item</u>	<u>Type</u>	<u>Size or Capacity</u>	<u>Present Value</u>
------------	-------------	-------------	-------------------------	----------------------

Firm Name

Agent Signature

Title

STATE OF OKLAHOMA }
COUNTY OF CLEVELAND }

_____, of legal age, being first duly sworn, upon his oath deposes and says that he executed the above questionnaire on behalf of the Bidder therein named; and that he had lawful authority to do so, and that the information contained therein is true and correct to the best of his knowledge and belief; that he has truthfully answered the questions set forth, and that he has not knowing withheld any information which might affect his status as bidder.

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

Notary Public

My Commission Expires: _____

PART 2

CONTRACT FORMS

E. CONTRACT

THIS CONTRACT made and entered into this ____ day of _____, 2026, by and between CITY OF MOORE, Oklahoma, a Municipal Corporation, acting by and through the Mayor and City Council, party of the first part, hereinafter referred to as "CITY", and _____, party of the second part, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY has caused to be prepared in accordance with law, certain Contract Documents and Technical Specifications (including Plans) for the work hereinafter described, and has caused a Solicitation for Bids to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for

Moore WWTP Digester Building Removal, Project No. 2026-004

and

WHEREAS, the Contractor in response to said Solicitation for Bids submitted to the CITY in the manner and at the time specified a sealed proposal in accordance with the terms and provisions of said Contract Documents and Technical Specifications, Plans and Addenda(s) associated with this project; and

WHEREAS, the CITY, in the manner provided by law, has publicly opened, examined, and canvassed all the proposals submitted and has determined and declared the above named Contractor to be the best responsive bidder on the above described project; and

WHEREAS, the City, has duly awarded this Contract to said Contractor for the sum specified in the Contractor's proposal, to wit:

Said proposal of _____ Dollars (\$) is
incorporated by reference into this contract.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this Contract have agreed, and hereby agree, as follows:

1. The Contractor shall, in a good and first-class workmanlike manner, at his own cost and expense, furnish all labor and materials, tools, and equipment required to perform and complete said work in strict accordance with this Contract, the Contract Documents and Technical Specifications and all applicable Plans and Addenda, all of which are on file in the office of the City Manager, 301 N. Broadway, Moore, OK, 73160, and hereby incorporated by reference and made a part of this Contract as if the same were each herein set out at length.

2. The CITY will make progress payments to the Contractor no more than once per month upon request of the Contractor.

Such payment will be made on the basis of an agreed estimate of work performed since the previous pay request, provided that the Contractor and the City Manager shall have previously come to an agreement as to the amount of the request prior to submission.

The City shall retain five percent (5%) of the amount of each estimate until the project is complete. This retainage shall not be released until final acceptance of project by the City Council.

Each monthly estimate for payment must contain or have attached an affidavit for payment, as set forth in the Contract Documents and Technical Specifications.

On completion of the work, but prior to the acceptance by the CITY, it shall be the duty of the City Manager, or his authorized designee, to determine that said work has been completed and fully performed in accordance with said Contract Documents and Technical Specifications and all applicable Plans and Addenda; and upon making such determination said official shall make his final certificate to the CITY.

The Contractor hereby agrees to commence work under this Contract on a date to be specified in a written "Work Order" of the CITY and to fully complete the project within **Sixty (60) consecutive calendar days**. The Contractor further agrees to pay as liquidated damages, the sum of **Five Hundred Dollars and 00/100 (\$500.00) for each consecutive calendar day** thereafter as provided in Article 15 of the General Conditions section of the Contract Documents and Technical Specifications.

The Contractor shall furnish proof that all claims and obligations incurred by him in connection with the performance of said work have been fully paid and settled; said information shall be in the form of an affidavit constituting the Contractor's Release to City as set forth in the Contract Documents and Technical Specifications; thereupon, the final estimate (including any retained amounts) will be approved and paid.

3. Discrimination. The Contractor agrees in connection with the performance of work under this contract as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, disability, age or ancestry. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship.) The Contractor agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Contract.

- b. The Contractor and subcontractor shall agree to post in a conspicuous place available to employees and applicants for employment, notice to be provided by the City of Moore setting forth provisions of this section.
 - c. In the event of the Contractor's non-compliance with the above non-discrimination clause, this Contract may be terminated by the CITY. The Contractor may also be declared by the CITY to be ineligible for future contracts with the CITY until satisfactory proof of intent to comply shall be made by the Contractor.
- 4. Use of Subcontractors. The Contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. At the request of the CITY, the Contractor shall furnish evidence of compliance with this requirement of minority solicitation. The Contractor further agrees to consider the grant of subcontracts to minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses.
 - 5. Entire Contract. This Contract and all the documents incorporated by reference contain the entire understanding and agreement of the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in writing hereto or attached. This Contract includes the following items: this Contract, the Contract Documents and Technical Specifications, all applicable Plans and Addenda and the Contractor's Proposal.
 - 6. Modification and Termination. This Contract cannot be modified or terminated except in writing signed by both parties or as otherwise provided herein.
 - 7. Assignment. This Contract shall not be assigned without the written consent of the CITY.
 - 8. Bankruptcy. If the Contractor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Contractor, or if a receiver is appointed for the Contractor, the CITY shall have the right to terminate this Contract upon written notice to the Contractor without prejudice to any claim for damages or any other right of the CITY under this Contract to the time of such termination.
 - 9. Variables in Cost. The parties hereto assume and understand that the variables in Contractor's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in Contractor's costs will in no way alter the Contractor's obligations under this Contract nor excuse performance or delay on his part.
 - 10. Choice of Laws and Venue. This Contract shall be governed by the laws of the State of Oklahoma. Any lawsuit brought concerning this Contract shall be filed with the appropriate state court, Cleveland County, Oklahoma or with the United States District Court for Western District of Oklahoma, as applicable.
 - 11. Equal Opportunity in Employment: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or physical

handicap. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

Davis Bacon Act wage rules shall apply. All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code and 29 CFR parts 1,3, and 5. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting. For more information please refer to Oklahoma Water Resources Board Supplemental Conditions, ORF-185 as well as <http://www.beta.sam.gov/>.

American Iron and Steel provisions also apply to projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to P.L. 113-76, Consolidated Appropriations Act, 2014, Sec. 436 requires that “None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.” For more information please refer to Oklahoma Water Resources Board Supplemental Conditions ORF-185.

This project is subject to Build America, Buy America (BABA) Act requirements. The BABA Act requires none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The BABA Act requirement does not supersede the AIS requirement, and both provisions still apply and work in conjunction. By submitting a bid/proposal under this solicitation, the Bidder certifies that all iron, steel, manufactured products, and construction materials for the project will meet the BABA requirements in the United States in accordance with the “Infrastructure Investment and Jobs Act, H.R. 3684.

Disbarment and Suspension: Bidders may not be debarred, suspended, or otherwise excluded from participation in the CWSRF under Executive Order 12549.

12. This Contract requires proper signature and acceptance by the Contractor and approval by the Moore City Council before it becomes effective.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, in three (3) originals, the day and year first above written.

(FOR CORPORATIONS ONLY)

Name of Corporation

By _____

Title _____

ATTEST:

Title _____
(AFFIX SEAL)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Name of Partnership or Proprietorship

By _____

Title _____

COUNTY OF CLEVELAND }
STATE OF OKLAHOMA }

Before me the undersigned, a Notary Public in and for said state, on this _____ day of _____, 2026, personally appeared _____, a member of the partnership/proprietorship _____ to me known to be the identical person who executed the within and foregoing instrument on behalf of said partnership/proprietorship and acknowledged to me that _____ (he/she) executed the same as _____ (his/her) free and voluntary act and deed, and for the free and voluntary act and deed of said partnership/proprietorship, for the uses and purposes therein set forth.

Notary Public

My Commission Expires _____

CITY OF MOORE, OKLAHOMA
A Municipal Corporation

Mark Hamm, MAYOR

ATTEST:

Vanessa Kemp, CITY CLERK

APPROVED as to form and legality this _____ day of _____, 2026.

Brian Miller, CITY ATTORNEY

F. PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum

of _____ DOLLARS (\$_____) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, trustees, successors, and assigns, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written contract with the CITY OF MOORE, OKLAHOMA, dated on the _____ day of _____, 2026, for

Moore WWTP Digester Building Removal, Project No. 2026-004

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the Office of the City Clerk, City of Moore, City Hall, 301 N. Broadway, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall

- (1) in all particulars, well, truly and faithfully perform and abide by said Contract, each and every covenant, and part thereof and shall fulfill all obligations resting upon said Principal by the terms of said Contract and said specifications; and
- (2) if said Principal shall promptly pay, or cause to be paid, all labor, materials and/or repairs and all bills for labor performed on said work, whether by subcontract or otherwise.

then this obligation shall be null and void. **Otherwise** said obligation shall be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode or procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligation of this bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized to do so, the day and year above written.

Dated this ____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title) (Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this ____ day of _____, 20__

Notary: _____ My commission expires:

G. STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum of

_____ DOLLARS
(\$_____) in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written Contract with the CITY OF MOORE, OKLAHOMA, dated on the _____ day of _____, 20____, for

Moore WWTP Digester Building Removal, Project No. 2026-004

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the Office of the City Clerk, City Hall, City of Moore, City Hall, 301 N. Broadway, Moore, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall fail or neglect to pay all indebtedness incurred by said Principal or subcontractors of said Principal who perform work in the performance of such contract, for labor and materials and repairs to and parts for equipment used and consumed in the performance of said Contract within thirty (30) days after the same becomes due and payable, the person, firm, or corporation entitled thereto may sue and recover on this bond, the amount so due and unpaid. It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this bond.

IN WITNESS WHEREOF, said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the year and day first above written.

Dated this _____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title) (Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this _____ day of _____, 20__

Notary: _____ My commission expires: _____

H. MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and
(full name and address)

_____ as Surety, a
(full name and address)

corporation organized under the laws of the State of _____, and authorized to transact business in the State of Oklahoma, are hereby held and firmly bound unto the CITY OF MOORE, as OWNER, in the penal sum of

_____ DOLLARS
(\$ _____) in lawful money of the United States of America, said sum being equal to One Hundred Percent (100%) of the Contract price, for two (2) years after completion and acceptance of the project, payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that WHEREAS, said Principal entered into a written contract with the CITY OF MOORE, OKLAHOMA, dated on the _____ day of _____, 2026, for

Moore WWTP Digester Building Removal, Project No. 2026-004

all in compliance with the plans and specifications therefore, made a part of this contract and file in the Office of the City Clerk of the City of Moore, City Hall, Moore, City Hall, 301 N. Broadway, Moore, Oklahoma 73160.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to the CITY OF MOORE, OKLAHOMA all damage, loss and expense which may result by reason of defective materials and/or workmanship in connection with said work for a period of TWO (2) years, from and after acceptance of said project by the CITY OF MOORE and if Principal shall pay or cause to be paid all labor and materials, including the prime contractor and all subcontractors; and if Principal shall save and hold the CITY OF MOORE harmless from any failure whatsoever of said Principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of the bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the surety

has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized to do so, the day and year first above written.

Dated this _____ day of _____, 20__.

Principal:

Surety:

(Name of Contractor)

By: _____
(Name & Title)

By: _____
Attorney-in-Fact (Affix Seal)

(FOR CORPORATIONS ONLY)

ATTEST:

(Name & Title) (Affix Seal)

(FOR PARTNERSHIPS AND PROPRIETORSHIPS)

Notarized on this _____ day of _____, 20__

Notary: _____ My commission expires: _____

NOTICE OF AWARD

Date of Issuance:

Owner: **City of Moore**

Owner's Project No.: **2026-004**

Engineer: **Garver, LLC**

Engineer's Project No: **2500545**

Project: **Moore WWTP Digester Building Removal**

Contract Name:

Bidder:

Bidder's Address:

You are notified that Owner has accepted your Bid dated **[date]** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[Describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is **\$(Contract Price)**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

[Number of copies sent] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **three** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): [Describe other conditions that require Successful Bidder's compliance]

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: _____

By (signature): _____

Name (printed): _____

Title: _____

Copy: Engineer

EJCDC® C-510, Notice of Award.

Copyright® 2018 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Moore** ("Owner") and **[name of contracting entity]** ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

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

- Demolition and disposal of the metal building covering the existing digesters.
- Demolition and disposal of the odor control ductwork within the building.
- Demolition and disposal of the building lighting, switches, and outlets.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as:
Moore WWTP Digester Building Removal

ARTICLE 3—ENGINEER

3.01 The Owner has retained **Garver, LLC** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Days*

- A. The Work will be substantially complete within **50** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **60** days after the date when the Contract Times commence to run.

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. *Milestones:* Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
 4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.05 *Special Damages*

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

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work other than Unit Price Work, a lump sum of \$_____.
- All specific cash/contingency allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
N/A	N/A	N/A	N/A	\$ N/A	\$ N/A
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$ N/A

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)
\$ _____.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the ordinal number, such as 5th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of the value of the Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 125 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

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

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual.
 - 6. Drawings (not attached but incorporated by reference).
 - 7. Addenda.
 - 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

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

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

8.02 *Contractor's Certifications*

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

8.03 *Standard General Conditions*

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

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

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

(If **Owner** is a corporation, attach evidence of authority to sign. If **Owner** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

License No.: _____
(where applicable)

State: _____

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).
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NOTICE TO PROCEED

Owner: City of Moore Owner's Project No.: 2026-004
Engineer: Garver Engineer's Project No.: 2500545
Contractor: _____ Contractor's Project No.: _____
Project: Moore WWTP Digester Building Removal
Contract Name: _____
Effective Date of Contract: _____

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The number of days to achieve Substantial Completion is **[number of days, from Agreement]** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of **[date, calculated from commencement date above]**; and the number of days to achieve readiness for final payment is **[number of days, from Agreement]** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of **[date, calculated from commencement date above]**.

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

Owner: City of Moore
By (signature): _____
Name (printed): _____
Title: _____
Date Issued: _____
Copy: Engineer

EJCDC® C-550, Notice to Proceed.

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PAYMENT BOND

Contractor Name: [Full formal name of Contractor] Address (<i>principal place of business</i>): [Address of Contractor's principal place of business]	Surety Name: [Full formal name of Surety] Address (<i>principal place of business</i>): [Address of Surety's principal place of business]
Owner Name: City of Moore Mailing address (<i>principal place of business</i>): Client Address, Moore, OK 73160	Contract Description (<i>name and location</i>): Moore WWTP Digester Building Removal, Moore, Oklahoma Contract Price: [Amount, from Contract] Effective Date of Contract: [Date, from Contract]
Bond Bond Amount: [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all

funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;
 - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
 - 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute

against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **None**

EJCDC® C-615, Payment Bond.
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WORK CHANGE DIRECTIVE NO. [Number of Work Change Directive]

Owner: **City of Moore** Owner's Project No.: **2026-004**
Engineer: **Garver** Engineer's Project No.: **2500545**
Contractor: Contractor's Project No.:
Project: **Moore WWTP Digester Building Removal**
Contract Name:
Date Issued: Effective Date of Work Change Directive:

Contractor is directed to proceed promptly with the following change(s):

Description:

[Description of the change to the Work]

Attachments:

[List documents related to the change to the Work]

Purpose for the Work Change Directive:

[Describe the purpose for the change to the Work]

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

☐ Non-agreement on pricing of proposed change. ☐ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: \$ _____ **[increase] [decrease] [not yet estimated].**

Contract Time: _____ days **[increase] [decrease] [not yet estimated].**

Basis of estimated change in Contract Price:

☐ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

Recommended by Engineer	Authorized by Owner
By: _____	_____
Title: _____	_____
Date: _____	_____

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CHANGE ORDER NO. [Number of Change Order]

Owner: **City of Moore**
Engineer: **Garver**
Contractor:
Project: **Moore WWTP Digester Building Removal**

Owner's Project No.: **2026-004**
Engineer's Project No.: **2500545**
Contractor's Project No.:

Contract Name:

Date Issued:

Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

Description:

[Description of the change]

Attachments:

[List documents related to the change]

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ _____	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ _____	[Increase] [Decrease] this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

	Recommended by Engineer (if required)	Accepted by Contractor
By:	_____	_____
Title:	_____	_____
Date:	_____	_____
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:	_____	_____
Title:	_____	_____
Date:	_____	_____

EJCDC® C-941, Change Order EJCDC® C-941, Change Order, Rev.1.
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CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: **City of Moore** Owner's Project No.: **2026-004**
Engineer: **Garver** Engineer's Project No.: **2500545**
Contractor: Contractor's Project No.:
Project: **Moore WWTP Digester Building Removal**
Contract Name:

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

[Describe the portion of the work for which Certificate of Substantial Completion is issued]

Date of Substantial Completion: **[Enter date, as determined by Engineer]**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: ☐ None ☐ As follows:

[List amendments to Owner's Responsibilities]

Amendments to Contractor's Responsibilities: ☐ None ☐ As follows:

[List amendments to Contractor's Responsibilities]

The following documents are attached to and made a part of this Certificate:

[List attachments such as punch list; other documents]

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By (signature): _____

Name (printed): _____

Title: _____

EJCDC® C-625, Certificate of Substantial Completion.
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NOTICE OF ACCEPTABILITY OF WORK

Owner:	City of Moore	Owner's Project No.:	2026-004
Engineer:	Garver	Engineer's Project No.:	2500545
Contractor:		Contractor's Project No.:	
Project:	Moore WWTP Digester Building Removal		
Contract Name:			
Notice Date:	Effective Date of the Construction Contract:		

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **[date of professional services agreement]** ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared based on Engineer's actual knowledge and information as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____

Name (printed): _____

Title: _____

EJCDC® C-626, Notice of Acceptability of Work.
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PART 3

CONDITIONS OF THE CONTRACT

General Conditions

The General Conditions, Section 00 72 00, have not been modified or amended in any way from the original publication of the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2018 Edition). Any modifications to these General Conditions have been made in the Supplementary Conditions, Section 00 73 00.

Supplementary Conditions

The Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2018 Edition), Section 00 72 00. All provisions that are not so amended or supplemented remain in full force and effect.

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology	5
Article 2—Preliminary Matters	6
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	6
2.02 Copies of Documents	6
2.03 Before Starting Construction	6
2.04 Preconstruction Conference; Designation of Authorized Representatives	7
2.05 Acceptance of Schedules	7
2.06 Electronic Transmittals	7
Article 3—Contract Documents: Intent, Requirements, Reuse	7
3.01 Intent.....	7
3.02 Reference Standards	8
3.03 Reporting and Resolving Discrepancies	8
3.04 Requirements of the Contract Documents.....	9
3.05 Reuse of Documents	9
Article 4—Commencement and Progress of the Work	10
4.01 Commencement of Contract Times; Notice to Proceed	10
4.02 Starting the Work.....	10
4.03 Reference Points	10
4.04 Progress Schedule	10
4.05 Delays in Contractor’s Progress	10
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	12
5.01 Availability of Lands	12
5.02 Use of Site and Other Areas.....	12
5.03 Subsurface and Physical Conditions.....	13
5.04 Differing Subsurface or Physical Conditions	13
5.05 Underground Facilities.....	15

5.06	Hazardous Environmental Conditions at Site	16
Article 6—Bonds and Insurance.....		18
6.01	Performance, Payment, and Other Bonds	18
6.02	Insurance—General Provisions.....	19
6.03	Contractor’s Insurance.....	20
6.04	Builder’s Risk and Other Property Insurance	21
6.05	Property Losses; Subrogation	22
6.06	Receipt and Application of Property Insurance Proceeds	23
Article 7—Contractor’s Responsibilities		23
7.01	Contractor’s Means and Methods of Construction	23
7.02	Supervision and Superintendence	23
7.03	Labor; Working Hours	23
7.04	Services, Materials, and Equipment	24
7.05	“Or Equals”	24
7.06	Substitutes	25
7.07	Concerning Subcontractors and Suppliers.....	26
7.08	Patent Fees and Royalties.....	27
7.09	Permits	28
7.10	Taxes	28
7.11	Laws and Regulations.....	28
7.12	Record Documents.....	28
7.13	Safety and Protection	29
7.14	Hazard Communication Programs	30
7.15	Emergencies.....	30
7.16	Submittals	30
7.17	Contractor’s General Warranty and Guarantee	32
7.18	Indemnification	33
7.19	Delegation of Professional Design Services	33
Article 8—Other Work at the Site.....		34
8.01	Other Work	34
8.02	Coordination	35
8.03	Legal Relationships.....	35
Article 9—Owner’s Responsibilities		36

9.01	Communications to Contractor	36
9.02	Replacement of Engineer	36
9.03	Furnish Data	36
9.04	Pay When Due.....	36
9.05	Lands and Easements; Reports, Tests, and Drawings.....	36
9.06	Insurance.....	36
9.07	Change Orders	36
9.08	Inspections, Tests, and Approvals.....	37
9.09	Limitations on Owner’s Responsibilities	37
9.10	Undisclosed Hazardous Environmental Condition.....	37
9.11	Evidence of Financial Arrangements.....	37
9.12	Safety Programs	37
Article 10—Engineer’s Status During Construction		37
10.01	Owner’s Representative.....	37
10.02	Visits to Site.....	37
10.03	Resident Project Representative.....	38
10.04	Engineer’s Authority	38
10.05	Determinations for Unit Price Work	38
10.06	Decisions on Requirements of Contract Documents and Acceptability of Work	38
10.07	Limitations on Engineer’s Authority and Responsibilities	38
10.08	Compliance with Safety Program.....	39
Article 11—Changes to the Contract		39
11.01	Amending and Supplementing the Contract	39
11.02	Change Orders	39
11.03	Work Change Directives.....	39
11.04	Field Orders.....	40
11.05	Owner-Authorized Changes in the Work.....	40
11.06	Unauthorized Changes in the Work.....	40
11.07	Change of Contract Price	40
11.08	Change of Contract Times.....	41
11.09	Change Proposals.....	41
11.10	Notification to Surety.....	42
Article 12—Claims.....		43

12.01	Claims	43
Article 13—Cost of the Work; Allowances; Unit Price Work		44
13.01	Cost of the Work	44
13.02	Allowances	47
13.03	Unit Price Work	47
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work		48
14.01	Access to Work.....	48
14.02	Tests, Inspections, and Approvals.....	48
14.03	Defective Work	49
14.04	Acceptance of Defective Work.....	49
14.05	Uncovering Work	50
14.06	Owner May Stop the Work	50
14.07	Owner May Correct Defective Work.....	50
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period		51
15.01	Progress Payments.....	51
15.02	Contractor’s Warranty of Title	53
15.03	Substantial Completion.....	53
15.04	Partial Use or Occupancy	54
15.05	Final Inspection	55
15.06	Final Payment.....	55
15.07	Waiver of Claims	56
15.08	Correction Period	56
Article 16—Suspension of Work and Termination		57
16.01	Owner May Suspend Work	57
16.02	Owner May Terminate for Cause.....	57
16.03	Owner May Terminate for Convenience.....	58
16.04	Contractor May Stop Work or Terminate	58
Article 17—Final Resolution of Disputes		59
17.01	Methods and Procedures.....	59
Article 18—Miscellaneous		59
18.01	Giving Notice	59
18.02	Computation of Times.....	59
18.03	Cumulative Remedies	59

18.04	Limitation of Damages	60
18.05	No Waiver	60
18.06	Survival of Obligations	60
18.07	Controlling Law	60
18.08	Assignment of Contract.....	60
18.09	Successors and Assigns	60
18.10	Headings.....	60

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

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

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

transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;
2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

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

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the

Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and

interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
 - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 - 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

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

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

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 - 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 - 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
 - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 - 2. is of such a nature as to require a change in the Drawings or Specifications;

3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

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

5.05 *Underground Facilities*

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

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

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

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
 - 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such

reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

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

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

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

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

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

identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

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

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an

endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

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

resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

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

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

- c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 Concerning Subcontractors and Suppliers

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

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

7.11 *Laws and Regulations*

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

7.12 *Record Documents*

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

to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

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

1. *Shop Drawings*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to

show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

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

C. *Engineer's Review of Shop Drawings and Samples*

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

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

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

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

- F. Owner-delegated Designs:** Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.

- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. Use or occupancy of the Work or any part thereof by Owner;
 5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

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

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable

direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

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

10.04 *Engineer's Authority*

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

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

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

complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

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

11.02 *Change Orders*

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

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the

terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

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

11.09 *Change Proposals*

- A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer

concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not

limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 Claims

- A. *Claims Process:* The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time

thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work

plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly

employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the

Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

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

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer

will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

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

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are

necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal

and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1— Definitions and Terminology	1
Article 2— Preliminary Matters	2
Article 3— Contract Documents: Intent, Requirements, Reuse.....	6
Article 4— Commencement and Progress of the Work	7
Article 5— Site, Subsurface and Physical Conditions, Hazardous Environmental Conditions	8
Article 6— Bonds and Insurance	10
Article 7— Contractor's Responsibilities	16
Article 8— Other Work at the Site	19
Article 9— Owner's Responsibilities	19
Article 10— Engineer's Status During Construction	19
Article 11— Changes to the Contract	21
Article 12— Claims.....	21
Article 13— Cost of Work; Allowances, Unit Price Work	21
Article 14— Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	22
Article 15— Payments to Contractor, Set Offs; Completions; Correction Period	23
SC- 15.08.A Delete "Substantial Completion" and insert "final acceptance" in lieu thereof.....	25
SC- 15.08 Add the following paragraphs immediately after paragraph 15.08.F:	25
Article 16— Suspension of Work and Termination	25
Article 17— Final Resolutions of Disputes.....	27
Article 18— Miscellaneous.....	28
Exhibit A— Foreseeable Bad Weather Days	1
RELEASE.....	2
CONTRACTOR'S AFFIDAVIT	3

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

SC-1.01.A Modify Section 1.01.A with the following:

Delete paragraph 1.01.A.5 and insert the following in lieu thereof:

5. Bidder - Any individual, partnership, corporation, joint venture, or other combination thereof who submits a Bid to Owner for the Work contemplated, acting directly or through an authorized representative. As used in the Contract Documents, masculine pronouns refer to both masculine and feminine genders.

Delete paragraph 1.01.A.16 and insert the following in lieu thereof:

16. Contractor – Person or entity identified as such in the Agreement and the Contractor's authorized representative who is referred to throughout the Contract Documents as if singular in number.

Delete paragraph 1.01.A.22 and insert the following in lieu thereof:

22. Engineer – Person or entity identified as such in the Agreement and the Engineer's authorized representative who is referred to throughout the Contract Documents as if singular in number.

Delete paragraph 1.01.A.30 and insert the following in lieu thereof:

30. Owner – The individual, entity, public body or authority identified as such in the Agreement and the Owner's authorized representatives who are referred to throughout the Contract Documents as if singular in number.

Add the following statement to the end of paragraph 1.01.A.42:

Substantial completion shall still require the Contractor to complete the punch list items unless waived by Owner.

Add the following subparagraphs immediately after subparagraph 1.01.A.50:

51. *Award* – The formal acceptance of the Bid by Owner.
52. *Bid Guarantee (Bid Bond)* – The security furnished with a Bid to guarantee that the Bidder will enter into the contract if Bidder's Bid is accepted by Owner.
53. *Calendar Day* – Any day of the week or month, no day being excepted.
54. *Competitive Sealed Proposal* – Procurement method that the Owner may use to request information from a prospective Bidder in which evaluation criteria will be used to select the Contractor for the project based on the best value instead of the lowest bidder. May be referred to as "Bid(s)" in the Bidding Documents.
55. *Design Engineer* – **Garver, LLC**

56. *Equipment (Construction)* – All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated. (Installation)
– All material or articles used in equipping a facility or apparatus required to fulfill a functional design.
57. *Execution* – Field or site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the site.
58. *Final Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion, expressed in writing, of Owner and Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended, all agreed to punch list items are complete and agreed to by the Owner, and is complete as agreed to by the Owner in writing. As a condition for Final Completion, the final inspection shall have been completed by the Owner and Engineer with a written acceptance of the work being complete, in writing by the Owner to the Contractor. As conditions for Final Completion, the specified Correction Period shall begin with all specified warranties being in place and functional. The terms “contractually complete”, and “date of final completion” and/or “Final Acceptance”, as applied to all or part of the Work refer to Final Completion of such Work.
59. *Materials* – All materials incorporated into the Project, including equipment and all other materials consumed or to be consumed in the performance of the Work contemplated.
60. *Owner’s Representative* – The authorized representative of Owner who is assigned to the site or any part thereof.
61. *Product Data* – Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts, and other information assembled by or for the Contractor and submitted by the Contractor to illustrate materials or equipment for some portion of the Work.
62. *Products* – Materials, equipment, systems, shop fabrications, mixtures, and source controls.
63. *Utility* – Any public or private fixed works for the transportation of fluids, gases, electricity, signals, or communications.

ARTICLE 2—PRELIMINARY MATTERS

2.02 Copies of Documents

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

- A. Owner shall furnish to Contractor 3 printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

2.03 Before Starting Construction

SC-2.03.A Add the following to Paragraph 2.03.A:

4. A preliminary Schedule of Payments showing projected cash flow.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

SC-2.04.A Delete Paragraph 2.04.A and insert the following in lieu thereof:

- A. Before the Contract Times start to run, but after Notice to Proceed is given, 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 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

2.05 *Acceptance of Schedules*

SC-2.05.A Add the following subparagraph to Paragraph 2.05.A:

5. Contractor's schedule of payments will be acceptable if it provides a reasonable projection of payments in relationship to the progress schedule and schedule of values.

2.06 *Electronic Transmittals*

SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

- B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. *Basic Requirements*

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.
- e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **20 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.
- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

- h. The Engineer will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:
 - 1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;
 - 2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;
 - 3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.); and
 - 4) Include any other Project Website attributes that may be pertinent to Contractor's use of the facility and pricing of such use.

C. *Software Requirements for Electronic Document Exchange; Limitations*

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
- 2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

SC-2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. *Requests by Contractor for Electronic Documents in Other Formats*

- 1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.
- 2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor ("Request") in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which Contractor agrees:
 - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely, and is being provided to Contractor on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor's application, or

may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.

- b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor's sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
 - c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor's use, adaptation, or distribution of any Electronic Documents provided under the Request.
 - d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor's subcontractors. Contractor warrants that subsequent use by Contractor's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.
3. In the event that Owner elects to provide or directs the Engineer to provide to Contractor any Contractor-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to Contractor, the Owner shall be reimbursed by Contractor on an hourly basis (at \$150 per hour) for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01 Add the following sentence and subparagraphs to Paragraph 3.01.A:

The Contract Document higher in precedence shall control and supersede the Contract Documents lower in precedence in accordance with the following listing arranged from the highest to the lowest in precedence:

1. Addenda, if any; Supplemental Agreements; and Change Order(s); the one dated later having precedence over another dated earlier.
2. Agreement.
3. General Requirements (DIVISION 01).
4. Other Specifications (DIVISION 02 and other DIVISIONS following it).
5. Drawings.
6. Standard Details.
7. Special Provisions and City Specifications.
8. Supplementary Conditions.
9. General Conditions.

3.02 *Reference Standards*

SC-3.02 Add the following language at the end of article 3.02.A.1:

If there is any conflict between the provisions of the Contract Documents and any such reference provisions, the language of the Contract Documents will take precedence over that of any standard specification, manual or code.

SC-3.03.B.1 Add the following new paragraph after article 3.03.B.1.b:

- c. Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of work or materials shall be estimated upon and, unless otherwise ordered by Engineering in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

SC-4.01.A Delete the last sentence of Paragraph 4.01.A and replace with the following:

In no event will the Contract Times commence to run later than the 90th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.03 *Reference Points*

SC-4.03.A Add the following three paragraphs at the end of Paragraph 4.03.A:

1. Construction staking is the responsibility of the Contractor. The Engineer will provide horizontal and vertical control throughout the length of the project. Horizontal control shall consist of referencing all Centerline P.C.'s and P.T.'s and establishing a control point approximately every 1000' along the centerline stationing. Vertical control shall consist of the establishment of accessible benchmarks at each end of the project and at a minimum of every 500' throughout the project as measured along the centerline. The remainder of the staking shall be the responsibility of the Contractor and shall be subject to inspection by the Engineer. The right of inspection is understood by the parties hereto as being for the purpose of ensuring that the plans and specifications are complied with and not to control the details of the work.
2. The contractor shall notify the Engineer at least seventy-two (72) hours in advance when control points will be needed.
3. The furnishing of the control points does not relieve the Contractor of the responsibility of checking to ensure that the new improvements are constructed to the lines and grades shown on the plans. Should any of the control be removed or otherwise disturbed through carelessness of the Contractor, they shall be replaced at the expense of the Contractor.

4.04 *Progress Schedule*

SC-4.04 Add the following subparagraph to Paragraph 4.04.A:

3. If, in the opinion of Engineer, Contractor falls behind the accepted Construction Schedule due to actions or neglect of Contractor or Contractor's agents, servants, employees, officers, subcontractors, directors, or any party contracting to perform part or all of the Work or to supply any equipment or materials, Contractor shall take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the Work is back on schedule. Contractor shall also submit for review not later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the

manner in which the acceptable rate of progress will be regained, all without additional cost to Owner.

4.05 *Delays in Contractor's Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
 - 1) Every workday on which one or more of the following conditions exist will be considered a "bad weather day":
 - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **0.10 inches** of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
 - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **32** degrees Fahrenheit.
 - 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the closest **NOAA** weather monitoring station with precipitation and air temperature data.
 - 3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit A—Foreseeable Bad Weather Days.
 - 4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit A—Foreseeable Bad Weather Days will be considered as "abnormal weather conditions." The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.

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

5.01 *Availability of Lands*

SC-5.01 Add the following Paragraph 5.01.D immediately following Paragraph 5.01.C:

- D. Any Work performed in public rights-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

5.02 *Use of Site and Other Areas*

SC-5.02.B Add the following language at the end of Paragraph 5.02.B:

All trees, stumps, slashings, brush or other debris removed from the Project Site or right-of-way as a preliminary to the construction of the work or its appurtenances shall be removed from the property and disposed of in a manner approved by the Owner. All excess spoil materials, excluding any items deemed reusable (salvageable) by the Owner, shall be the property of the Contractor. The responsibility of locating suitable disposal sites for removal items on this project will be solely a function of the Contractor. The Owner will in no way be responsible for the actions of the Contractor if he disposes of excess material and debris in locations that are not approved. No extra compensation will be made for the removal and hauling of this material; all costs shall be included in the various items listed in the bid proposal.

5.03 Subsurface and Physical Conditions

SC-5.03.A Add the following sentence to the end of Paragraph 5.03.A.3:

The data given herein and shown on the drawings is as accurate as could be obtained; its accuracy is not guaranteed.

SC-5.03.C In Paragraph 5.03.C, delete the words "Technical Data expressly identified in the Supplementary Conditions" and insert "Technical Data, which is limited to data provided in the reports and drawings listed in the Supplementary Conditions" in lieu thereof. Add the following subparagraph to 5.03.D:

5. any Contractor interpretation of the character and condition of the materials between test hole locations.

SC-5.03.D Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
Plans for Wastewater Treatment System Improvements, City of Moore/Moore Public Works Authority, Moore, Oklahoma by Eagle Consultants, Inc.	March 19, 2010	

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F by downloading a copy of the documents from the Garver online plan room used for this project.

5.05 Underground Facilities

SC-5.05.A Add the following subparagraphs to Paragraph 5.05.A:

6. Generally, service connections are not indicated on the Drawings. Contractor shall be responsible for discovery of existing underground installations, in advance of excavating

or trenching, by contacting all local utilities and by prospecting through hydro-excavation or potholing.

7. All information relative to Underground Facilities shall be recorded and incorporated into the record documents required by paragraph 7.12.
8. Contractor will be held responsible for any unauthorized interruption in the operation of Underground Facilities as a result of Contractor's operations. Unless the owner of the damaged facility elects to perform the repair and restoration work, Contractor shall repair and fully restore any damaged Underground Facility to a condition at least equal to that which existed just prior to the time of damage. All repair and restoration work shall be done to the satisfaction of the facility owner and Engineer.
9. Contractor shall arrange for any inspection of repaired or reconditioned Utility facilities required by authorities having jurisdiction. All inspection fees shall be paid by Contractor. If the facility owner elects to perform the repair and restoration work, Contractor shall render all assistance required. Contractor shall be responsible for all just and reasonable expenses incurred by the facility owners for such work.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be two (2) years after Substantial Completion.

2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of twenty-five (25) percent of the final Contract Price. The warranty bond period will extend to a date two (2) years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

6.02 Insurance—General Provisions

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.02.N Delete "10 days" in the first sentence of Paragraph 6.02.N and insert "30 days" in lieu thereof.

SC-6.02 Add the following Paragraphs 6.02.O and 6.02.P immediately after Paragraph 6.02.N:

- O. *Indemnification:* For the consideration included in the bid price, Contractor and his subcontractors shall pay to indemnify and save harmless the City, its agents, guests, consultants (including the Engineer), invitees, employees, from all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgements of every kind and description to which the City, its agents, guests, consultants, invitees, or employees may be subjected to by reason of injury to persons or death or property damage, resulting from or growing out of any act of commission, omission, negligence or fault of the Contractor and his subcontractors, their agents or employees, committed in connection with this contract, Contractor's performance hereof, or any work performed hereunder. Contractor and his subcontractors shall indemnify and save harmless the City, its agents, or employees and consultants (including the Engineer), from and against all claims, demands, actions, suits, damages, losses, expenses, costs including attorney's fees, and judgements of every kind and description arising from, based upon, or growing out of the violation of any federal, state, county, or city law, bylaw, ordinance or regulation by the Contractor, its agents, trainees, invitees, servants, and employees.
- P. Contractor shall deliver all certificates of insurance required by the Contract Documents to Owner with executed Agreement.

6.03 Contractor's Insurance

SC-6.03.A Delete Paragraph 6.03.A and replace with the following, in lieu thereof:

Required Insurance: Contractor shall purchase and maintain, in a company or companies licensed to do business in the State of the project, and to which the Owner has no reasonable objection, Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions. The commercial liability insurance form of policy may be used in lieu of comprehensive general liability form. The limits of liability for the insurance required by Article 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by laws and regulators.

SC-6.03.B Add the following subparagraphs to Paragraph 6.03.B:

6. Contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance; and

7. With respect to workers' compensation and employer's liability, comprehensive automobile liability, commercial general liability, and umbrella liability insurance, Contractor shall require Contractor's insurance carriers to waive all rights of subrogation against Owner, Engineer, Engineer's Consultants, and their respective officers, directors, partners, employees, and agents.
- E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	\$500,000
Applicable Federal (e.g., Longshoreman's)	\$500,000
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	\$Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$N/A
Bodily injury by disease—aggregate	\$N/A
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$2,000,000

- F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
- damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 - damages insured by reasonably available personal injury liability coverage, and
 - damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
- Products and completed operations coverage.
 - Such insurance must be maintained for three years after final payment.
 - Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 - Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 - Severability of interests and no insured-versus-insured or cross-liability exclusions.
 - Underground, explosion, and collapse coverage.
 - Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. **Commercial General Liability—Excluded Content:** The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 6. Any limitation or exclusion based on the nature of Contractor's work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. **Commercial General Liability—Minimum Policy Limits**

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$ 5,000,000
Products—Completed Operations Aggregate	\$ 5,000,000
Personal and Advertising Injury	\$ 5,000,000
Bodily Injury and Property Damage—Each Occurrence	\$ 5,000,000

- J. **Automobile Liability:** Contractor shall purchase and maintain automobile liability insurance 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. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$2,000,000
Property Damage	
Each Accident	\$1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$ 5,000,000

- K. **Umbrella or Excess Liability:** Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability,

and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein.
- M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$1,000,000
General Aggregate	\$2,000,000

- N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	\$N/A
Annual Aggregate	\$N/A

- O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	\$N/A
Aggregate	\$N/A

- P. *Unmanned Aerial Vehicle Liability Insurance*: If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$ 1,000,000
General Aggregate	\$ 2,000,000

- Q. *Other Required Insurance*: **[Here list additional types and amounts of insurance that Contractor is required to carry.]**

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

- A. Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. *Builder's Risk Requirements*: The builder's risk insurance must:
1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
 2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

- G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.03 Labor; Working Hours

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. The Contractor may undertake work only between 7:00 a.m. and 6:00 p.m. on Monday through Saturday except in the case of urgent necessity in the interest of Public Safety.
2. Owner's legal holidays are: New Year's Day (January 1); Dr. Martin Luther King Jr.'s Birthday (3rd Monday in January); President's Day (3rd Monday in February); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (1st Monday in September); Columbus Day (2nd Monday in October); Veterans Day (November 11) Thanksgiving Day (4th Thursday in November); Day after Thanksgiving (Friday following Thanksgiving); Christmas Eve (December 24); and Christmas Day (December 25). If a holiday falls on a Saturday or Sunday, the observed day shall be the Friday preceding the Saturday or the Monday following the Sunday.

7.04 *Services, Materials, and Equipment*

SC-7.04 Add the following new paragraph immediately after Paragraph 7.04.C:

- D. Before ordering materials or doing any work, the contractor shall in all cases verify measurements at the site or premises and check same against the Drawings. No extra charge or compensation will be allowed on the account of differences between actual dimensions and measurements shown on the Drawings. Any differences found shall be submitted to the Owner for resolution before proceeding with the work.

7.05 *"Or Equals"*

SC-7.05.A Delete the last sentence in Paragraph 7.05.A and replace with the following, in lieu thereof:

If the specification or description contains the words, "or equal" or "or equal allowed", or "or equal item is permitted", Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below. Unless these words are specifically written in the description of such item, no substitution is allowed per this Contract. If the item's description is followed by words reading that "no like", "no equivalent", or "no or equal" item is permitted, then no substitution of like items or like manufacturers is allowed as part of this Contract.

SC-7.05.C Amend the next to the last sentence of Article 7.05.C as follows:

Delete the phrase at the end of the sentence "an approved Shop Drawing." and add the phrase, "an Addendum."

7.06 *Substitutes*

SC-7.06.A Delete the first sentence in Paragraph 7.06.A and replace with the following, in lieu thereof:

Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that, "or equal" or "or equal allowed", or "or equal item is permitted", then no substitution of like items is permitted. If the item's description includes the words "no substitution is permitted", "no like", "no equivalent", or "no or equal" item is permitted, then no substitution of like items or like manufacturers is allowed as part of this Contract. If the words, "or equal is permitted", "or equal", or "like items are permitted", Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below.

7.07 *Concerning Subcontractors and Suppliers*

SC-7.07.D Delete Paragraph 7.07.D and replace with the following in lieu thereof, and add subparagraph 7.07.D.1:

- D. Contractor shall submit to the Owner a list of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner as stipulated in the Bidding Documents. Owner's acceptance (either in writing or by failing to make written objection thereto within two weeks of submittal of the list) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation.
 - 1. Subcontracting: Contractor shall perform with Contractor's own organization work amounting to not less than 51 percent of the combined value of all items of the Work covered by the Contract.

SC-7.07.F Delete Paragraph 7.07.F and replace with the following, in lieu thereof:

- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall not be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

7.09 *Permits*

SC-7.09.A Add the following subparagraph immediately after Paragraph 7.09.A:

1. The Owner will provide right-of-way for the purpose of construction without cost to the Contractor by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the Contractor, prior to the initiation of construction on easements through private property, to inform the property owner of his intent to begin construction. Before beginning construction in areas of public dedication, the Contractor shall inform the agency having jurisdiction in the area prior to the initiation of the work. The Contractor shall pay for all fees and permits, as called for above, except for Building Permits which will be paid for by the Owner.

7.10 *Taxes*

SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of Oklahoma of cities and counties thereof on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

7.11 *Laws and Regulations*

SC-7.11 Delete Paragraph 7.11.A and replace with the following in lieu thereof:

- A. Contractor shall give all notices required by and comply with all Laws and Regulations applicable to furnishing and performance of the Work and shall cause all Contractor's agents, employees, Subcontractors, and Suppliers to observe and comply with all such laws, ordinances, and regulations.

7.12 *Record Documents*

SC-7.12 Add the following Paragraph 7.12.B immediately following Paragraph 7.11.A:

- B. Prior to submitting each request for progress payment, request Engineer's review and approval of current status of record documents. Failure to properly maintain, update, and submit record documents may result in a deferral by Engineer to recommend whole or any part of Contractor's Application for Payment, either partial or final.

7.13 *Safety and Protection*

SC-7.13.G Insert the following after the second sentence of Paragraph 7.13.G:

The following Owner safety programs are applicable to the Work: **None.**

SC-7.13 Add the following Paragraphs 7.13.K and 7.13.L immediately after Paragraph 7.13.J:

- K. The Contractor shall comply with all Occupational Safety and Health Act (OSHA) Standards and any other Federal, State, or Local rules and regulations applicable to construction and/or maintenance activities in the State of Oklahoma. City Safety Personnel or any supervisor may, but are not required to, order that the work be stopped if a condition of immediate danger is found to exist. Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damage sustained as a result of a violation of this Article from the Contractor to the Owner. The Contractor shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site. The parties hereto expressly agree that the obligation to comply with applicable safety provisions is a material provision of this Contract and a duty of the Contractor. The Owner reserves the right to require demonstration of compliance upon reasonable request. In the

event the Contractor is unable to demonstrate compliance with the safety provisions of this Contract, the parties agree that such failure is deemed to be a material breach of this Agreement; and the Contractor agrees that upon such breach, all work pursuant to the Contract shall terminate until demonstration to the Owner that the safety provisions of the Agreement have been complied with. In no event shall action or failure to act on the part of the Owner be construed as a duty to enforce the safety provisions of this 'Agreement nor shall it be construed to create liability for the City for any act or failure to act in respect to the safety provisions of this Agreement.

- L. *Safety Equipment:* The Contractor shall be responsible for the safety equipment to be used by its employees and/or all of its subcontractors working on the Owner's property. This equipment will include, but may not be limited to, hard hats, safety belts or harnesses, eye, face, hand, ear or hearing protection. Sport or athletic type shoes are not considered suitable work shoes on any construction site.

7.16 *Submittals*

SC-7.16.E Delete Paragraph 7.16E.1.b and replace with the following, in lieu thereof:

- b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Furnish as Submitted, Furnish as Noted, Furnish as Corrected, Partial Resubmit, Revise and Resubmit, or Rejected.

ARTICLE 8—OTHER WORK AT THE SITE

8.02 *Coordination*

SC-8.03 Delete the first sentence in Paragraph 8.03.A and replace with the following in lieu thereof:

If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction then Contractor *may* be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.02 *Replacement of Engineer*

SC-9.02.A Delete the following text in the first sentence of Paragraph 9.02.A:

"provided Contractor makes no reasonable objection to the replacement Engineer."

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
 - 1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

3. *Liaison*

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
- c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

4. *Review of Work; Defective Work*

- a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
- b. Observe whether any Work in place appears to be defective.
- c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

- a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
- b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

- a. Participate in Engineer's visits regarding Substantial Completion.
- b. Assist in the preparation of a punch list of items to be completed or corrected.
- c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- d. Observe whether items on the final punch list have been completed or corrected.

- D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

- 5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

11.05 *Owner-Authorized Changes in the Work*

SC-11.05.A Add the following language at the end of Paragraph 11.05.A:

It is further agreed that the quantities of work to be done at unit prices and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the Engineer, to complete the work fully as planned and contemplated and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth except as provided for in the Specifications. The Owner reserves the right to increase or decrease the amount of work to be done by any amount not to be exceeded by twenty-five percent (25%) of the original contract amount. In the event the increase pertains to items not originally bid, the Contractor shall submit a bid in writing to the Engineer for approval. It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer but not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions; similarly, they may be decreased to cover deletion or work so ordered. The Owner reserves the right to reject the Contractor's bid on such Extra Work and secure such work to be done other than by said Contractor.

11.08 *Change of Contract Times*

SC-11.08 Add the following Paragraphs 11.08.C and 11.05.D:

C. Use of Float:

1. A claim for an adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.
2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Engineer.

- D. The Contract Time includes weather day allowances as listed in Exhibit A. Extension of contract time will be allowed for each month's days that are in excess of each month's anticipated weather days as identified as identified in Exhibit A.

ARTICLE 12—CLAIMS

No modifications.

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

13.01 *Cost of the Work*

SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentences:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of the cost guide, entitled "Rental Rate Blue Book," and revisions thereto. Attachments (e.g. tractor with ripper and dozer or tractor with loader and backhoe) will be included in the hourly rental rate only when deemed essential to the Work as determined by Engineer. The total established rental rate per hour shall be rounded to the nearest \$0.10. Rental rates shall not be adjusted for regional differences. No compensation shall be allowed for shop tools having a daily rental rate less than \$10.00 as set forth in the cost guide. If deemed necessary by Engineer to use equipment not listed in the aforementioned publications, a suitable rental rate for such equipment will be mutually established by Contractor and Engineer. Contractor may furnish any cost data that might establish a suitable rental rate for such equipment. Rental payment will be made for the actual time that such equipment is in operation on the Work and for 20 percent of the actual standby time on the Work.

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

- a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than \$500.

13.03 *Unit Price Work*

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the extended price of a particular item of Unit Price Work amounts to five (5) percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than twenty (20) percent from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.02 *Tests, Inspections, and Approvals*

SC-14.02.A Delete Paragraph 14.02.A and replace with the following in lieu thereof:

- A. Contractor shall give the Owner's Representative timely notice of readiness of the Work for all required inspections, tests or approvals. The site must be ready for testing upon the Contractor's notification to the Owner's Representative. Should the site not be properly prepared for testing upon the arrival of the testing agent, any costs which are incurred will be

borne solely by the Contractor. The Owner may withhold payment until the payment of the related outstanding expenses are resolved.

SC-14.02.B Amend the first sentence of Paragraph 14.02.B as follows:

Replace "Owner" with "Contractor" to designate the payor of independent testing laboratory services. Replace "except that" with "including but not limited to the following".

14.05 *Uncovering Work*

SC-14.05.C Amend the first sentence of Paragraph 14.05.C.2 as follows:

Delete the word "shall" and replace with the word "may".

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

SC-15.01.B Delete "At least twenty days before the date established for each progress payment (but not more than once a month)" in the first sentence of paragraph 15.01.B and insert "On the last day of each calendar month" in lieu thereof and add the following subparagraphs at the end of 15.01.B:

5. Schedules and Data: During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated schedule of operations, or progress report, with such shop drawings schedules, procurement schedules, value of material on hand included in application, and other data as reasonably required by Engineer.
6. Payment for material delivered to the work site or stored under Owner's control will be based on the vendors' paid invoices or the bill of lading showing date of delivery and the work site where the delivery took place, a copy of which shall be furnished by Contractor to Engineer with each request for progress payment. Only those materials which have been incorporated into the Project or are stored under Owner's control may be included in the progress payment as material stored.
7. In addition to the amounts which Owner may retain as provided elsewhere in the Contract Documents, Owner may withhold a sufficient amount or amounts from any payment otherwise due Contractor as in Owner's judgment may be necessary to cover:
 - a. Payments which may be due and payable for properly filed claims against Contractor or any Subcontractor for labor or materials furnished in or about the performance of the Contract.
 - b. Estimated or actual costs for correcting defective work not remedied.
 - c. Amounts claimed by Owner as forfeiture due to delays or other offsets. Owner may apply such withheld amount or amounts to the payment of such claim at Owner's discretion. In doing so, Owner shall be deemed the agent of Contractor and any payments so made by Owner shall be considered as a payment made under the Contract by Owner to Contractor, and Owner shall not be liable to Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. Owner shall render to Contractor a proper account of any such funds disbursed in or on behalf of Contractor.
8. Contractor shall disburse money paid to him, including any interest Contractor receives, to Subcontractors and Suppliers within 15 days after Contractor receives the money, in direct proportion to the Subcontractors' and Suppliers' basis in the total Contract between Contractor and Owner. Any money which is payable to a Subcontractor pursuant to this section accrues interest at the legal rate. Contractor may withhold 10 percent from the amount of any partial payment under a subcontract which is made before 50 percent of the Work has been completed under the subcontract. Thereafter Contractor shall pay any

additional funds if, in the opinion of Contractor, satisfactory progress is being made in the work under the subcontract, and the payment must be equal to that paid by Owner to Contractor for the Work performed by the Subcontractor.

- a. The Contractor may retain the amount withheld under the subcontract until the subcontract is satisfactorily completed.
- b. The amount withheld under the subcontract is due within 15 days after the acceptance of the subcontract work by Contractor.
- c. Whenever Contractor receives a payment of interest earned on the amount withheld from the Contract, Contractor shall within 15 days pay to each Subcontractor that portion of the interest received from the state which is attributable to the amount of money withheld from the Subcontractor.

SC-15.01.B.1 After the first sentence of Paragraph 15.01.B.1. add the following sentence:

Supporting documentation shall include copies of requisitions or invoices from subcontractors and material suppliers, and any other data the Engineer or Owner may reasonably require.

SC-15.01.B.2 Delete Paragraph 15.01.B.2 and replace with the following in lieu thereof:

2. The Owner will not make payment on materials and equipment not incorporated into the work.

SC-15.01.C Amend Paragraph 15.01.C.1 to read as follows:

“within 20 days after receipt of the Application for Payment...”

SC-15.01.D Delete paragraph 15.01.D.1 and insert the following paragraph in lieu thereof:

1. Sixty (60) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended less amounts due to Owner and other amounts which are authorized to be reserved or retained by state law will (subject to the provisions of paragraph 15.01) become due and when due will be paid by Owner to Contractor.

15.03 *Substantial Completion*

SC-15.03.A Add the following subparagraphs immediately after paragraph 15.03.A:

1. A phase of the Work shall be Substantially Complete when the Digester metal building, odor control duct, and building circuitry are removed from the site to the quality and in the quantity in accordance with the Contract Documents. All materials associated with a phase of the work shall be demolished and removed from the site, or temporary arrangements satisfactory to Owner shall have been made. All performance testing need not be completed prior to the date of Substantial Completion.
2. For the work to be considered substantially complete, all portions of the work must be operational and ready for Owner's continuous use.

SC-15.03.B Add the following new subparagraph 15.03.B.1 to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.06 *Final Payment*

SC-15.06.A Add the following new Paragraph 15.06.A.2.f immediately after Paragraph 15.06.A.2.e:

- f. The final application for payment shall be accompanied by the following items in addition to those required above:
 - 1) Project Record Documents (to requirements of the Contract Documents)
 - 2) Operating Maintenance Data, Instructions to Owner's personnel (to requirements of the Contract Documents)
 - 3) Warranties and Bonds.
 - 4) Keys.
 - 5) Evidence of Payment and Release of Liens (to requirements of Contract Documents)

SC-15.06.E In the last sentence of Paragraph 15.06.E, delete the number "30" and replace with the number "60".

15.08 *Correction Period*

SC-15.08.A Delete "*Substantial Completion*" and insert "*final acceptance*" in lieu thereof.

SC-15.08 Add the following paragraphs immediately after paragraph 15.08.F:

- G. Contractor's obligation under this paragraph includes also providing a correction period from the substantial completion of any early completion items until the project's final completion and the beginning and completion of the 1-year completion's period as defined in paragraph 15.08.A.
- H. Remedying Defects: If, at any time before expiration of the correction period under 15.08.A, Owner determines that the goods are defective, Contractor shall either correct the defects or remove the goods and replace them with non-defective goods.
- I. Owner May Remedy: If Contractor fails to take action as required by Owner in accordance with paragraph 15.08.B, Owner may, after ten days' written notice to Contractor, remedy any such deficiency, instead of requiring removal or replacement. In an emergency where delay would cause serious risk of loss or damage, Owner may take such action without notice to or waiting for action by Contractor.
- J. Correction Period: Contractor's responsibility for remedying defects will extend for a period of one (1) year after date of final acceptance, or for such longer period of time as may be prescribed by law or by provisions of manufacturer's warranty or guarantee in conformance with the Contract Documents.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

SC-16.01.A Delete paragraph 16.01.A and insert the following in lieu thereof:

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

16.02 *Owner May Terminate for Cause*

SC-16.02 Delete paragraphs 16.02.A through 16.02.D and insert the following in lieu thereof:

- A. If Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the completion of the Work within the Contract Times, or any extension thereof, or fails or refuses to complete such Work within such extension, or if Contractor should be adjudged bankrupt, or if Contractor should make assignment for the benefit of Contractor's creditors, or if Contractor files a petition to take advantage of any debtor's act, or if a receiver should be appointed on account of Contractor's insolvency, or if Contractor or any Subcontractor should violate any provision of the Contract, or if Contractor should persistently refuse or should fail to supply enough properly skilled workmen or proper materials to complete the Work in the time specified, or if Contractor should fail to make prompt payment to Subcontractors or for materials or labor, or if Contractor should disregard laws, ordinances, or instructions given by Owner, Engineer, or Owner's Operating Agent or disregard in any substantial way any provisions of the Contract Documents; Owner may without prejudice to any other right or remedy, serve written notice upon Contractor and Contractor's surety of Owner's intention to terminate the Contract. Such notice will contain the reasons for Owner's intention to terminate the Contract and unless such violations shall cease and satisfactory arrangements for the corrections thereof have been accepted by Owner in writing within 10 days after the service of such notice, the Contract shall upon the expiration of said 10 days cease and terminate. In the event of such termination, the Owner shall immediately serve written notice upon the Surety and Contractor, and Contractor shall be liable for all costs necessary to complete the Work.
- B. The Surety shall, after receipt of notification from Owner of termination of the Contract, take over and perform the Work, utilizing a contractor which qualified under the prequalification criteria and which is acceptable to Engineer. The Surety shall, within 10 days after receipt of the notice of termination, provide Owner with written notice of Surety's intent to take over and complete the Work in accordance with the Contract Documents, and shall commence the Work within 10 days thereafter.
- C. If the Surety does not reply to the notice of termination, or fails to perform the Work in compliance with the Contract Documents, or provides the Owner with written notice that Surety does not intend to take over and perform the Work to completion, Owner may without prejudice on the part of the Surety, take over the Work and prosecute the same to completion by any method Owner may deem advisable for the account at the expense of Contractor, and the Surety shall be liable to Owner for any excess cost or other damage occasioned Owner thereby. In such event Owner may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Contractor that may be on the work sites and be necessary therefor. Contractor shall turn over to Owner's Operating Agent all materials and equipment in Contractor's possession that is to be incorporated into the Project, and shall make arrangements with Owner to turn over any materials or equipment in which Owner has made payment or partial payment but is not in Owner's possession.
- D. Upon completion of the Work, if the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Work, including, but not limited to, all costs incurred by Owner from professional services and attorneys' fees and all costs generated to insure or bond the Work of substituted contractors or subcontractors used to complete the Work, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner within 30 days upon demand; on failure of Contractor to pay, the Surety shall promptly pay the difference to Owner upon written notice of Contractor's failure of payment. Such difference or any portion thereof not paid by the Contractor or the Surety within the 30 days following the date of mailing of the demand for payment, shall earn interest at the rate of 10 percent per annum or the maximum rate authorized by state law, whichever is lower.

16.04 *Contractor May Stop Work or Terminate*

SC-16.04 Delete paragraph 16.04 in its entirety.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

17.02 *Arbitration*

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 Attorneys' Fees

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new Paragraph immediately after Paragraph 17.01" and revise the numbering accordingly].

17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

SC-18.11 Add the following new paragraph after Paragraph 18.10:

18.11 Roadways

- A. No public road shall be entirely closed overnight. It shall be the responsibility of the Contractor to build and maintain asphalt pavement by-passes and detours, if necessary, and to properly light, barricade, and mark all by-passes and detours that might be required on or across the road involved in the work included in this contract.
- B. The Contractor shall make every effort to complete construction and allow immediate access to adjacent property at all driveway entrances. Owners or tenants of improvements where access and/or entrance drives are located shall be notified at least twenty-four (24) hours prior to the time the construction will started at their driveways or entrances and informed as to the length of time driveways will be closed, which period shall not exceed six (6) hours.
- C. The Contractor shall be responsible for all road and entrance reconstruction, and repairs and maintenance of same, for a period of two (2) years from the date of acceptance. In the event the repairs and maintenance are made immediately to the satisfaction of the Owner, and it becomes necessary for the Owner to make such repairs, the Contractor shall reimburse the Owner for the cost of such repairs.

- D. The Contractor shall, at all times, keep a sufficient width of the roadway clear of dirt and other material to allow the free flow of traffic. The Contractor shall assume any and all responsibility for damage, personal or otherwise, that may be caused by the construction along public roadways or private driveways.

SC-18.12 Add the following new paragraph after Paragraph 18.11:

18.12 *Barricades, Lights, and Watchmen*

- A. Where the work is carried on in or adjacent to any street, alley or public place, the Contractor shall, at his own cost and expense, furnish and erect such barricades, fences, lights, and danger signals, shall provide such watchmen, and shall provide such other precautionary measures for the protection of persons or property and of the work as necessary. Barricades shall be painted in a color that will be visible at night. From sunset to sunrise the Contractor shall furnish and maintain at least one light at each barricade and a sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchmen in sufficient numbers to protect the work.
- B. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights, and watchmen to protect it, and whenever evidence is found of such damage, the Owner may order the damaged portion immediately removed and replaced by the Contractor at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs, lights and for providing watchmen shall not cease until the project shall have been accepted by the Owner.
- C. The Contractor shall use only battery powered lights, enclosed lanterns or other lights satisfactory to the Owner. Smudge Pots or other lights which have an open flame will not be permitted.
- D. The Contractor will be required to furnish all barricades, lights, signs, and flagmen where it becomes necessary to reroute traffic during the time construction is in progress in the City streets or highways. The detour will be determined by the Engineers and approved by the Owner and, as applicable, the Oklahoma Department of Transportation.

SC-18.13 Add the following new paragraph after Paragraph 18.12:

18.13 *Fences, Drainage Channels and Crop Damage*

- A. The Contractor shall not be held liable for unavoidable crop damage to crops provided such damage occurs within the construction easement provided.
- B. Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original condition or grade and cross section after work of construction is completed.
- C. Boundary fences or other improvements removed to permit the prosecution of the work shall be replaced in the same location or relocated to their positions prior to City temporary removal or relocation for franchise utility work, and left in a condition as good or better than that in which they were found. No compensation will be provided for removal and replacement of fences. All costs associated with the fence removal and replacement shall be in the lump sum bid for right-of-way preparation.

SC-18.14 Add the following new paragraph after Paragraph 18.13:

18.14 *Protection of Trees*

- A. No trees shall be removed or cut except upon the specific authority of the Owner. Trees adjacent to the work shall be protected from all damage by the Contractor's construction operations. See Appendix "A" for the City's Tree Preservation Ordinance.

SC-18.15 Add the following new paragraph after Paragraph 18.14:

18.15 *Cleanup*

- A. During Construction - The Contractor shall at all times keep the job site as free from all material, debris and rubbish as is practical and shall remove same from any portion of the job site, when it becomes objectionable or interferes with the project in the opinion of the Owner's Representative.
- B. Final - Upon completion of the work, the Contractor shall remove from the site all materials, debris, tools and equipment belonging to him, and leave the site with an appearance acceptable to the Owner. The Contractor shall thoroughly clean all equipment and materials installed by him and shall deliver over such materials and equipment in a bright, clean polished and new appearing condition.

SC-18.16 Add the following new paragraph after Paragraph 18.15:

18.16 *Minimum Wage Rates*

- A. The specified wage rates are minimum rates only, and the Owner will not consider any claims for additional compensation made by the Contractor of any wage range in excess of the applicable rate contained in this contract. All disputes in regard to payment of wages in excess of those specified in this contract shall be adjusted by the Contractor.

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EXHIBIT A—FORESEEABLE BAD WEATHER DAYS

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1) and Temperature
January	8
February	9
March	6
April	5
May	8
June	7
July	7
August	4
September	4
October	5
November	4
December	5
Notes: 1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of “dry” powder snow equals one inch of rain.	

RELEASE

FROM: Contractor's Name _____

Address _____

TO: Owner's Name _____

Address _____

DATE OF CONTRACT:

Upon receipt of the final payment and in consideration of that amount, the undersigned does hereby release the Owner and its agents from any and all claims arising under or by virtue of this Contract or modification thereof occurring from the undersigned's performance in connection with the _____ project.

Contractor's Signature

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires:

CONTRACTOR'S AFFIDAVIT

FROM: Contractor's Name _____

Address _____

TO: Owner's Name _____

Address _____

DATE OF CONTRACT: _____

I hereby certify that all claims for material, labor, and supplies entered into contingent and incident to the construction or used in the course of the performance of the work on the _____ project have been fully satisfied.

Contractor's Signature

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My Commission Expires:

The Surety Company consents to the release of the retained percentage on this project with the understanding that should any unforeseen contingencies arise having a right of action on the bond that the Surety Company will not waive liability through the consent to the release of the retained percentage.

Dated _____
Surety Company

By _____
Resident Agent, State of Oklahoma

Bidder's Statement about: **Equal Opportunity Clause (ORF-211)**

Mark **one**:

- ☐ I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 or preceding Executive Orders 10925 and 11114. I have filed all reports due under the requirements contained in 40 CFR, Part C, 8.11.
- ☐ I have not participated in previous contract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 or preceding Executive Orders 10925 and 11114.

- ☐ I will obtain a similar statement from any proposed subcontractor(s), when appropriate.

Bidder's Statement about: **Non-Segregated Facilities (ORF-212)**

- ☐ I hereby certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any subcontract exceeding \$10,000 which is not exempted from the equal opportunity clause.

Bidder's Statement about: **Bonds**

- ☐ I hereby certify that I will obtain and provide a Bid Bond along with my Bid.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Performance Bond for 100% of the contract amount.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Statutory/Payment Bond for 100% of the contract amount.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Maintenance Bond for at least 1 year after construction completion, and 100% of the contract amount

Bidder's Statement about: **Suspension and Debarment**

- ☐ I am not debarred, suspended, or otherwise excluded from participation in Federal programs under Executive Order 12549, one of which programs is the CWSRF.

- ☐ I certify that I will actively review the status of all of the subcontractors in this work to verify they are not debarred, suspended, or otherwise excluded from participation in Federal programs.

Bidder's Statement about: **Davis Bacon Act and American Iron and Steel**

- ☐ I hereby certify that all of my employees will be paid according to the Davis Bacon Act.
- ☐ I hereby certify that I will comply with the American Iron and Steel requirement.

Name and Title of Prospective Prime Contractor's Representative

Signature of Prospective Prime Contractor's Representative

Name and address of Prospective Prime Contractor

BIDDER'S AMERICAN IRON AND STEEL CERTIFICATION

I, the Bidder, _____, authorized
Contractor's Authorized Representative
 representative of _____, hereby certify that I am aware of
Contractor
 the requirement per Section 436(a)-(f) of the Consolidated Appropriations Act of 2014, as
 amended, by which all applicable products made primarily out of iron and steel used in
 this project must be manufactured in the United States, and that the bid prepared for
 _____ has been prepared accordingly, as it is
Project
 funded through the Clean Water State Revolving Fund (loan number ORF-____-____-
 CW). I, the Bidder, am aware that none of the funds appropriated or otherwise made
 available by the Consolidated Appropriation Act of 2014 (Appropriations Act) shall be used
 for the construction, alteration, maintenance, or repair of a treatment works unless all of
 the iron and steel products used in the project are produced in the United States. I, the
 Bidder, furthermore certify the following:

1. The bidder understands the term "iron and steel products" applies to the following materials made primarily of iron or steel, and used for the construction, alteration, maintenance, or repair of publicly owned treatment works; lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and other construction materials as defined by the U.S. Environmental Protection Agency (EPA). For additional guidance, visit http://water.epa.gov/grants_funding/aisrequirement.cfm
2. The bidder further states that this requirement applies to all portions of the project that are subcontracted.
3. This "Bidder's American Iron and Steel Certification" is to be submitted by the bidder as part of its bid.

4. Iron and steel of unknown origin are considered to have been produced or manufactured outside the United States.
5. Consistent with the terms of the Owner's bid solicitation and the provisions of Use of American Iron and Steel Section 436, the bidder certifies that this bid reflects the bidder's best, good faith effort to identify domestic sources of iron and steel goods in the bid solicitation where such American-made goods are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
6. The bidder certifies that all iron and steel products contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the bidder agrees that it will provide reasonable, sufficient, and timely verification to the Owner of the U.S. production of each component so identified.
7. The bidder certifies that for any iron and steel products that are not American-made and are so identified in this bid, the bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by EPA in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components; If the Administrator of EPA receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Website of EPA.
 - b. Verifiable documentation sufficient to the Owner, as required in the bid solicitation or otherwise, that the bidder has sought to secure American-produced goods but has determined that such goods are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the bidder under the applicable conditions stated in the bid solicitation or otherwise.
8. The bidder certifies that for any such product or products that are not so available, the bidder has also provided in or attached to this bid certification, including but not

limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-produced iron and steel goods, that the bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under Use of American Iron and Steel with respect to such product or products.

9. If use of a non-compliant iron and/or steel product is permanently incorporated into a project, one or more of the following can occur:
 - a. Request a waiver where appropriate.
 - b. Require the removal of the non-domestic item.
 - c. Payment withholding of all or part of the project.
10. The bidder further agrees that, if this bid is accepted, it will assist the Owner in amending, supplementing, or further supporting such information as required by the Owner to request and, as applicable, implement the terms of a waiver with respect to any such product or products. The EPA strongly recommends the use of a step certification, similar to the one used by the Federal Highway Administration. The final manufacturer can also certify that the manufacturing process occurred in the United States.

Contractor's Authorized Representative
Signature

____/____/_____
Date

Build America, Buy America Act (BABA) FAQs for Manufacturers

U.S. Environmental Protection Agency

June 2025

The purpose of this document is to assist product manufacturers, suppliers, and distributors with understanding the Build America, Buy America Act (BABA)¹ requirements. This document consists of a series of frequently asked questions (FAQs) with responses based on Office of Management and Budget (OMB) guidance^{2,3}, U.S. Environmental Protection Agency (EPA) implementation procedures,⁴ and other resources. This document does not address domestic sourcing requirements associated with federal procurement or financial assistance from other federal agencies.⁵ For current information on BABA implementation at the EPA, visit the [EPA's BABA website](#).

Q1. Does my product need to meet the BABA requirements?

Your product needs to meet the BABA requirements for being considered “produced in the United States” if it is an iron or steel product, construction material, or manufactured product, and you want to supply it to infrastructure projects receiving any form of federal financial assistance (e.g., grants, loans, cooperative agreements, and rebates). See Q2-Q7 to understand if your product is considered an iron or steel product, construction material, or manufactured product and what “produced in the United States” means for each of these product categories.

Infrastructure projects are defined very broadly to include any activity related to the construction, alteration, maintenance, or repair of any structures, facilities, or equipment that serve a public function. Infrastructure projects include but are not limited to roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; buildings and real property (except for private homes for personal use); and energy generation, transportation, and distribution including electric vehicle charging. In addition, a project serves a public function if it is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation. [More than 70 EPA programs](#) fund infrastructure projects that can only use iron or steel products, construction materials, or manufactured products that are “produced in the United States.”

Your product may NOT need to meet the BABA requirements if any of the following are true:

- Your product is not directly incorporated into a federally funded infrastructure project (e.g., your product is a component or subcomponent of another product).
- Your product is brought to the project site and removed at or before the completion of the infrastructure project (e.g., temporary scaffolding).

¹ [Build America, Buy America Act \(BABA\)](#). Pub. L. No. 117-58, §§ 70901-52.

² [2 CFR 184](#). Buy America Preferences for Infrastructure Projects.

³ [M-24-02](#). Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

⁴ [Build America, Buy America \(BABA\) EPA Programs](#).

⁵ See [MadeinAmerica.gov](#) for information on BABA implementation at other agencies.

- Your product is equipment or furnishing that is used at or within the finished infrastructure project but is not an integral part of the project (e.g., movable chair, desk, portable computer equipment).
- Your product is vegetation, biodegradable materials, or soil.
- Your product is a cement or cementitious material, aggregate (e.g., stone, sand, gravel), or aggregate binding agent or additive unless it has been combined with other materials and processed into a specific form and shape (e.g., precast concrete).
- The EPA has approved a waiver that applies to your product or to the project to which you are supplying your product. See Q12 for more information on waivers.

Q2. Is my product considered an iron or steel product?

For BABA purposes, your product is considered an iron or steel product if it consists wholly or predominantly of iron or steel or a combination of both. This means that the cost of the iron and steel content exceeds 50 percent of the total cost of all components. The cost of iron and steel is the cost of the iron or steel mill products (e.g., bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. Components are items incorporated directly into an iron or steel product. Additional products may qualify as an iron or steel product if they are being supplied to water infrastructure projects that must comply with the American Iron and Steel (AIS) requirements.⁶

Q3. What does it mean to be “produced in the United States” for iron or steel products?

For BABA purposes, iron or steel products are considered “produced in the United States” if all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. If an iron or steel product was manufactured by re-heating imported ferrous sources such as billets or ingots, it is not considered “produced in the United States.” The [EPA’s Minor \(Ferrous\) Components Waiver](#) allows up to five percent of the total material cost of an iron or steel product to include miscellaneous minor iron or steel components that are nondomestic or of unknown origin.

Q4. Is my product considered a construction material?

For BABA purposes, your product is considered a construction material if it consists of only one of the following items: non-ferrous metals; plastic and polymer-based products (e.g., polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); fiber optic cable (including drop cable); optical fiber; lumber; engineered wood; and drywall. Minor additions to a construction material, including binding agents or additions described in the standard for that construction material (see Q5) do not change its categorization as a construction material. If your product combines more than one of the listed construction materials or combines one of the listed construction materials with other materials, then it is considered a manufactured product for BABA purposes.

⁶ See the [EPA’s AIS website](#) for more information on AIS implementation at the EPA.

Q5. What does it mean to be “produced in the United States” for construction materials?

For BABA purposes, construction materials are considered “produced in the United States” if all manufacturing process occurred in the United States. The following list includes each construction material followed by a standard for the material to be considered “produced in the United States.”

- Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Q6. Is my product considered a manufactured product?

For BABA purposes, your product is considered a manufactured product if it does not meet the definition of an iron or steel product (see Q2) or a construction material (see Q4) and is not an exempted material (see Q1). Manufactured products are defined as articles, materials, or supplies that have been processed into a specific form and shape or have been combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

Q7. What does it mean to be “produced in the United States” for manufactured products?

For BABA purposes, manufactured products are considered “produced in the United States” if the final product was manufactured in the United States and components of domestic origin constitute greater than 55 percent of the total cost of all components. Components are items incorporated directly into the final manufactured product. The cost of a component includes transportation costs, any applicable duties, and allocable overhead costs. The cost of a component does NOT include any costs associated with manufacture of the final manufactured product. More information on determining the cost of components for manufactured products can be found in OMB’s guidance at [2 CFR 184.5](#).

Q8. How do I demonstrate that my product meets the BABA requirements?

To demonstrate that your product meets the BABA requirements, the product manufacturer should provide a self-certification letter attesting that the product(s) supplied to the infrastructure project meet the BABA requirements. The entity receiving the federal financial assistance is ultimately responsible for ensuring BABA compliance and must collect and maintain compliance documentation such as these self-certification letters for all products that are incorporated into their infrastructure project. They may work through a contractor to collect manufacturer self-certification letters. See Q9 for more information on what should be included in manufacturer self-certification letters.

Q9. What should be included in a manufacturer self-certification letter?

Manufacturer self-certification letters should be product-specific and project-specific. They should identify the project by name, location, and/or contract/project number and identify the product(s) actually supplied to the project. They should also contain a statement attesting that the product(s) meet the BABA requirements for the specific product category (i.e., iron or steel products, construction materials, manufactured products), and the location(s) of manufacturing (city and state). Finally, the letter should be on company letterhead and signed by a qualified manufacturer representative. To view manufacturer self-certification letter templates, visit the resources page of the [EPA's BABA website](#).

Q10. Does the EPA certify products or manage a list of products that meet the BABA requirements?

The EPA does not certify products that meet the BABA requirements. The EPA relies on a system of manufacturer self-certification letters described in Q8 and Q9.

The EPA does not manage a list of products that meet the BABA requirements. Products that meet the BABA requirements should be identified as such on your website and/or in your sales materials. These products may be more readily considered for incorporation into infrastructure projects receiving federal financial assistance.

Q11. What if my product is shipped as a kit?

For BABA purposes, if your product is considered a manufactured product but is brought to the project site as separate components intended for final assembly or installation onsite, it can still be treated and evaluated as a single manufactured product. Delivering the product as a kit rather than a fully assembled product must be standard business practice in the industry and you must be meaningfully involved in the manufacturing process of a component of the kit. This treatment is limited to discrete products that perform a unified function and does not apply to more wide-ranging systems of interconnected products (e.g., heating, ventilation, and air conditions systems for an entire building). When calculating the cost of components for a product shipped as a kit, do not include the cost of transportation to the project site.

Q12. Can I obtain a waiver if my product does not meet the BABA requirements?

The EPA does not have the authority to waive the BABA requirements for individual manufacturers. The EPA only has authority to waive the BABA requirements for certain products or projects if: (1) applying the BABA requirements would be inconsistent with public interest; (2) products that meet the BABA requirements are not available in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of products that meet the BABA requirements will increase the cost of the overall infrastructure project by more than 25 percent.

The EPA only accepts project-specific waiver requests if they are submitted by the entity receiving the federal financial assistance (or their authorized representative) and only after the entity has conducted market research to justify the need for the waiver. The EPA does not accept waiver requests submitted by product manufacturers, suppliers, or distributors. Project-specific waivers do not waive the BABA requirements for other EPA-funded projects. Similarly, waivers issued by other federal agencies do not waive the BABA requirements for EPA-funded projects.⁷

The EPA has program-wide and agency-wide waivers that may apply to your product or to the project to which you are supplying your product (e.g., the [EPA's De Minimis Waiver](#)). If you believe this is the case, the entity receiving the EPA's federal financial assistance should contact their project officer and provide a rationale for applying the waiver. Note that waivers have specific applicability conditions and other requirements, which must be followed.

To view a list of the EPA's approved general applicability and project-specific waivers, visit the approved waivers page of the [EPA's BABA website](#).

Q13. What if my product does not meet the BABA requirements and is not covered by a waiver?

If your product does not meet the BABA requirements and is not covered by a waiver, it cannot be incorporated into infrastructure projects receiving federal financial assistance. If the EPA finds that a manufacturer has knowingly misrepresented their product's adherence to the BABA requirements in a self-certification letter, the case would be referred to the EPA's Office of Inspector General (OIG), who may pursue civil or criminal penalties.

At all levels where fraud, waste, abuse, or any violation of the law is suspected, the EPA's OIG should be contacted immediately. The EPA's OIG can be reached at 1-888-546-8740 or OIG_Hotline@epa.gov. For more information, visit the [EPA's OIG website](#).

Q14. Where can I find more information on BABA implementation at the EPA?

For more information on BABA implementation at the EPA, please visit the [EPA's BABA website](#), which includes links to relevant OMB guidance (e.g., [2 CFR 184](#) and [M-24-02](#)), manufacturer self-

⁷ See [MadeinAmerica.gov](https://www.madeinamerica.gov) to view a list BABA waivers issued by other federal agencies.

certification letter templates, approved waivers, waivers open for public comment, and program-specific implementation procedures.

Q15. Who can I contact for more information on BABA?

For general questions, please email EPA_BABA_Waiver@epa.gov. If the question is regarding a specific project or program, please email the EPA office funding the project:

- For the Office of Water (OW), please email BABA-OW@epa.gov
- For the Office of Land and Emergency Management (OLEM), please email BABA-OLEM@epa.gov
- For the Office of Research and Development (ORD), please email BABA-ORD@epa.gov
- For the Office of Transportation and Air Quality (OTAQ), please email BABA-OTAQ@epa.gov
- For the Climate Pollution Reduction Grants, please email BABA-CPRG@epa.gov
- For the Office of International and Tribal Affairs (OITA), please email GAP@epa.gov
- For the Greenhouse Gas Reduction Fund (GGRF), please contact BABA-GGRF@epa.gov

The following information is provided as a sample letter of certification for **BABA** compliance for Non-Ferrous **Construction Materials**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the non-ferrous construction materials shipped/provided to the subject project are in full compliance with the Buy America, Build America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). Each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurred in the United States, per [OMB Guidance 2 CFR 184.6](#). Detailed standard provided below.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Such product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative

Printed name of company representative

Professional title of company representative

Email address

Phone number

§ 184.6 Construction material standards.

- (a) The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.”
- (1) ***Non-ferrous metals.*** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
 - (2) ***Plastic and polymer-based products.*** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
 - (3) ***Glass.*** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
 - (4) ***Fiber optic cable (including drop cable).*** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
 - (5) ***Optical fiber.*** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
 - (6) ***Lumber.*** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
 - (7) ***Drywall.*** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
 - (8) ***Engineered wood.*** All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

The following information is provided as a sample letter of certification for **BABA** compliance for **Iron/Steel Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the (initial melting, reheating, refining, forming, rolling, drawing, finishing, fabricating, coating, assembly) of the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement (AIS) (if applicable), and for the iron/steel category of products in the Build America, Buy America Act requirement, as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable).

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Such product manufacturing process(es) took place at the following location: (City and State)

Initial Melting location: (City and State)

Bending, Cutting, etc location: (City and State; list out each step taken by a different manufacturer or producer)

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative

Printed name of company representative

Professional title of company representative

Email address

Phone number

The following information is provided as a sample letter of certification for **BABA** compliance for **Manufactured Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the manufactured product(s) shipped/provided to the subject project is/are in full compliance with the Build America, Buy America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). This/these product(s) meet(s) the 55 percent component cost test, where the cost of components that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components; and final manufacturing occurred in the United States.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Final product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative

Printed name of company representative

Professional title of company representative

Email address

Phone number

BIDDER'S BUILD AMERICA BUY AMERICA CERTIFICATION

I, the Bidder, _____, authorized representative
Contractor's Authorized Representative
 of _____, hereby certify that funds for this project must comply
Contractor
 with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No. 117-58) which the Bidder understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the project are to be produced in the United States ("Build America, Buy America [BABA] Requirements") unless (i) the Bidder has requested and obtained a waiver from the cognizant Agency pertaining to the project or the project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Bidder in writing that the BABA Requirements are not applicable to the project.

The Bidder is aware that all iron and steel, manufactured projects, and construction materials used for this project must be produced in the United States per BABA requirements, and that the bid prepared for _____ has
Project
 been prepared accordingly, as it is funded through the Clean Water State Revolving Fund (loan number ORF-____-____-CW). and furthermore certifies as follows.

1. The Bidder understands the term "iron and steel, manufactured products, and construction materials" applies to all projects for the construction, alteration, maintenance, or repair of publically owned treatment works or public water systems. The Bidder understands the term "iron and steel, manufactured products, and construction materials" refers to the following:

- a. To establish standards defining the term “all manufacturing processes” in the case of construction materials, Office of Management and Budget (“OMB”) must first determine to which materials the standards will apply.
 - b. The IIJA finds that “construction materials” include an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of: Non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall.
2. The Bidder further states that this requirement applies to all portions of the project that are subcontracted.
3. This “Bidder’s Build America Buy America Certification” is to be submitted by the Bidder as a part of this bid and proposal.
4. Iron and steel, manufactured products, and construction materials of unknown origin are considered to have been produced or manufactured outside the United States.
5. Identification of American-produced Iron and Steel, Manufactured Products, and Construction Materials: Consistent with the terms of the Owner’s bid solicitation and the provisions of BABA, the Bidder certifies that this bid reflects the Bidder’s best, good faith effort to identify domestic sources of iron and steel, manufactured products, and construction materials in the bid solicitation where such American-made goods are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
6. Verification of U.S. Production: The Bidder certifies that all iron and steel, manufactured products, and construction materials contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Owner of the U.S. production of each component so identified.

7. Documentation Regarding Non-American-made Iron and Steel Goods: The Bidder certifies that for any iron and steel, manufactured products, and construction material that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency ("EPA") in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components. If the Administrator of EPA receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Website of EPA.
 - b. Verifiable documentation sufficient to the Owner, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-produced goods but has determined that such goods are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
8. Information and Detailed Justification Regarding Non-American-produced Iron and Steel, Manufactured products, and Construction Materials: The Bidder certifies that for any such product or products that are not so available, the Bidder has also provided in or attached to this bid certification, including but not limited to the verifiable documentation and a full description of the Bidder's efforts to secure any such American-produced iron and steel, manufactured products, and construction materials, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under Use of American Iron and Steel with respect to such product or products.

9. If use of a noncompliant iron and steel, manufactured products, and construction materials is permanently incorporated into a project, one or more of the following can occur: 1) Request a waiver where appropriate. 2) Require the removal of the non-domestic item. 3) Payment for all or part of the project will be withheld.
10. The Bidder further agrees that, if this bid is accepted, it will assist the Owner in amending, supplementing, or further supporting such information as required by the Owner to request and, as applicable, implement the terms of a waiver with respect to any such product or products. EPA strongly recommends the use of a step certification, similar to the one used by the Federal Highway Administration. The final manufacturer can also certify that the manufacturing process occurred in the United States.

Contractor's Authorized Representative Signature

____/____/_____
Date

Bidder's Statement about: **Equal Opportunity Clause (ORF-211)**

Mark **one**:

- ☐ I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 or preceding Executive Orders 10925 and 11114. I have filed all reports due under the requirements contained in 40 CFR, Part C, 8.11.
- ☐ I have not participated in previous contract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 or preceding Executive Orders 10925 and 11114.

- ☐ I will obtain a similar statement from any proposed subcontractor(s), when appropriate.

Bidder's Statement about: **Non-Segregated Facilities (ORF-212)**

- ☐ I hereby certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any subcontract exceeding \$10,000 which is not exempted from the equal opportunity clause.

Bidder's Statement about: **Bonds**

- ☐ I hereby certify that I will obtain and provide a Bid Bond along with my Bid.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Performance Bond for 100% of the contract amount.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Statutory/Payment Bond for 100% of the contract amount.
- ☐ I hereby certify that, in the event of being awarded a Contract, I will provide a Maintenance Bond for at least 1 year after construction completion, and 100% of the contract amount

Bidder's Statement about: **Sam.gov registration**

Mark **one**:

- ☐ I have registered in SAM.gov and my status is "active".
- ☐ I am not currently registered in SAM.gov, but I will be registered and holding an "active" status prior to the beginning of any construction.

- ☐ I certify that I will actively review the SAM.gov status of all of the subcontractors in this work to verify they are registered and their status is "active".

Bidder's Statement about: **Davis Bacon Act and Build America Buy America**

- ☐ I hereby certify that all of my employees will be paid according to the Davis Bacon Act.
- ☐ I hereby certify that I will comply with the **Build America Buy America requirement.**

Name and Title of Prospective Prime Contractor's Representative

Signature of Prospective Prime Contractor's Representative

Name and address of Prospective Prime Contractor

Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. OWRB Financial Assistance Agreement Recipients must require prime contractors to provide this form to their DBE subcontractors.

Subcontractor Name _____	Project Name _____
Bid Proposal # _____	Point of Contact _____
Address _____	
Phone _____	e-mail _____
Prime Contractor Name _____	Funding Entity Oklahoma Water Resources Board

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified by:	<input type="checkbox"/> DOT	<input type="checkbox"/> SBA	Other: _____
Meets or exceeds EPA certification standards?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor signature	Print Name
Title	Date

Subcontractor signature	Print Name
Title	Date

BIDDERS LIST**To be completed by Project Owner** for all bidding Prime Contractors & Subcontractors.(List of **all firms** that bid or quote on **Prime Contracts** and **Subcontracts** on the project, including Services and Supplies)

Project Name: _____ CWSRF Loan Number: ORF-__-____-CW

Company Name:	
Address:	
Contact Name:	
Phone:	
Email:	
Quote/Bid Amount (\$)	
Date:	
Utilized: Y___ N___	If utilized and >\$10,000, ORF-212a form is required (all subcontractors and suppliers).
DBE: Y___ N___ If yes , MBE or WBE? _____	Check one: Construction <input type="checkbox"/> Equipment <input type="checkbox"/> Services <input type="checkbox"/> Supplies <input type="checkbox"/> ORF 6100-3 form is required for all DBEs that bid/quote, even if not utilized. Submit with Bidders List. If utilized submit the following with Bidders List: <ul style="list-style-type: none"> • A copy of the companies MBE or WBE certificate is required. • ORF 6100-4 form is also required.

Company Name:	
Address:	
Contact Name:	
Phone:	
Email:	
Quote/Bid Amount (\$)	
Date:	
Utilized: Y___ N___	If utilized and >\$10,000, ORF-212a form is required (all subcontractors and suppliers).
DBE: Y___ N___ If yes , MBE or WBE? _____	Check one: Construction <input type="checkbox"/> Equipment <input type="checkbox"/> Services <input type="checkbox"/> Supplies <input type="checkbox"/> ORF 6100-3 form is required for all DBEs that bid/quote, even if not utilized. Submit with Bidders List. If utilized submit the following with Bidders List: <ul style="list-style-type: none"> • A copy of the companies MBE or WBE certificate is required. • ORF 6100-4 form is also required.

Company Name:	
Address:	
Contact Name:	
Phone:	
Email:	
Quote/Bid Amount (\$)	
Date:	
Utilized: Y___ N___	If utilized and >\$10,000, ORF-212a form is required (all subcontractors and suppliers).
DBE: Y___ N___ If yes , MBE or WBE? _____	Check one: Construction <input type="checkbox"/> Equipment <input type="checkbox"/> Services <input type="checkbox"/> Supplies <input type="checkbox"/> ORF 6100-3 form is required for all DBEs that bid/quote, even if not utilized. Submit with Bidders List. If utilized submit the following with Bidders List: <ul style="list-style-type: none"> • A copy of the companies MBE or WBE certificate is required. • ORF 6100-4 form is also required.

*Copy this form if additional pages are required.

Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form

OWRB Financial Assistance Agreement recipients must require prime contractors to provide this form to their DBE¹ subcontractors². This form gives a DBE subcontractor the opportunity to describe work received and/or report any concerns regarding the project.

Subcontractor Name _____	Project Name _____
Bid Proposal # _____	Point of Contact _____
Address _____	
Phone _____	e-mail _____
Prime Contractor Name _____	Funding Entity Oklahoma Water Resources Board

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received from Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Please use the space below to report any concerns regarding the above OWRB-funded project:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Subcontractor signature	Print Name
Title	Date

Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. OWRB Financial Assistance Agreement recipients must require their prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name _____	Project Name _____		
Bid Proposal # _____	Point of Contact _____		
Address _____			
Phone _____	e-mail _____		
Funding Entity <u>Oklahoma Water Resources Board</u>	I have identified potential DBE certified subcontractors: <input type="checkbox"/> YES <input type="checkbox"/> NO		
If yes, please complete the table below. If no, please explain: _____			
Subcontractor Name/ Company Name	Address/Phone/Email	Estimated \$ Amount	Currently Certified?

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor signature	Print Name
Title	Date

Disadvantaged Business Enterprise Program (DBE) Guidance

Important note: All OWRB and EPA forms can be found at www.owrb.ok.gov/forms

The Oklahoma CWSRF receives a portion of their funding from the U.S. Environmental Protection Agency (EPA). The federal funds are used to supplement low interest rate loans to finance wastewater and water quality projects. As a condition of federal grant awards, EPA regulations require that loan recipients and sub-recipients (i.e., prime contractors and subcontractors) make a good-faith effort to award a fair share of work to DBE's who are small business enterprises (SBE's), minority business enterprises (MBE's) and women's business enterprises (WBE's). Additionally, EPA's DBE rule requires loan recipients and sub-recipients adhere to the terms and conditions on Appendix A attached hereto.

To ensure compliance with EPA's DBE requirements, both **Loan Recipients (Project Owners)** and **Prime Contractors must** undertake the good faith efforts to provide opportunities for DBE firms to participate in contracts. EPA regulations require evidence of the demonstration of the six good faith efforts in trying to achieve the DBE participation goals. Oklahoma's negotiated DBE participation goals with EPA can be found on the [OWRB Financial Assistance website](http://www.owrb.ok.gov/financial-assistance). The goals are not a quota. The Oklahoma Department of Transportation has developed a DBE Directory of Certified Firms. This database can be found at this website: <https://okdot.gob2g.com/Default.asp>

Good Faith Efforts: The following good faith efforts apply to the procurement categories involving CWSRF financial assistance funds (See Appendix B: EPA Good Faith Efforts):

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For state and local government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

Please submit all information to:

Financial Assistance Division, OWRB
3800 North Classen Blvd, Oklahoma City, OK 73118
Phone: 405.530.8800, FAX: 405.530.8900
<http://www.owrb.ok.gov>

Demonstration of the Six Good Faith Efforts. See **Appendices A & B** for additional bidding instructions and contract administrative provisions.

A: Project Owners are required to create and maintain a bidders list in accordance with Subpart E of Part 33 of EPA's Disadvantaged Business Enterprise Program rule, (§ 33.501(b)). The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts, on competitively bid CWSRF funded projects. The bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors and can be provided on **Bidders List (ORF-249)**:

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when; and
4. Entity's status as an MBE/WBE or non-MBE/WBE

B: Project Owners are required to undertake good faith efforts. Steps 1 through 5 can be utilized during the project planning, design and/or pre-bidding phase, to assure that qualified DBE firms have procurement opportunities in construction, equipment, services, and supplies.

To provide procurement opportunities to DBE Firms, the Project Owner should undertake the following:

- Conduct pre-bid meetings to inform potential bidders/contractors about DBE requirements and provide guidance in undertaking the required good faith efforts.

- Use listings of certified DBEs from the U.S. Small Business Administration (SBA), Oklahoma Department of Transportation (ODOT), etc, to solicit DBE firms as prime contractors whenever they are potential candidates. Project Owners should advertise in minority, local and regional newspapers and in the Dodge report.
- Invite DBE firms, where appropriate, to meetings, conferences etc., to inform them of procurement opportunities and develop, where possible, reasonable contract and delivery schedules that encourage and facilitate participation by DBE's. This includes, whenever possible, a minimum of 30 calendar days for bids or request for proposals.
- Determine if a project can be broken down into smaller components/contracts to allow opportunity for DBE firms to bid both as prime-contractors and as sub-contractors.
- For projects broken down into smaller components (e.g., painting, roofing, excavation, pipe laying, etc.,) ensure that the delivery schedules are reasonable.
- Encourage DBE firms, where appropriate, to apply as a consortium of DBE's, when a contract is too large for one of these firms to handle individually.
- **Require prime contractor** to complete **ORF Form 6100-3 & ORF Form 6100-4** and submit with bid proposal to Project Owner.

C: Project Owners must require the prime contractor to undertake steps 1 through 5 of the Good Faith Efforts in providing DBE firms opportunity for sub-contracts.

Project Owner must provide the **DBE Guidance (ORF-267)** and associated forms to Prime Contractors for utilization of DBE's in the bidding documents.

APPENDIX A: Project Owner, Prime Contractor and Sub-Contractor Responsibilities

EPA's Disadvantaged Business Enterprise Program rule applies to contract procurement actions funded in part by EPA assistance agreements awarded after May 27, 2008. The rule is found at Federal regulation Title 40, Part 33. Specific responsibilities are highlighted below.

Project Owner Responsibilities:

- Include OWRB's DBE guidance (ORF-267) in each contract with a primary contractor.
- Employ the six Good Faith Efforts during prime contractor procurement (§33.301).
- Require prime contractor to comply with the following prime contractor requirements of Title 40 Part 33:
 - a) To employ the six Good Faith Efforts steps in paragraphs (a) through (e) of § 33.301 if the prime contractor awards subcontracts (§ 33.301(f)).
 - b) To provide **ORF form 6100-2 – DBE Subcontractor Participation Form to all DBE subcontractors** (Optional submittal by subcontractors) (§ 33.302(e)).
 - c) To submit **ORF form 6100-3 – DBE Program Subcontractor Performance Form and ORF form 6100-4 – DBE Program Subcontractor Utilization Form with bid package or proposal.** (§ 33.302 (f) and (g)).
 - d) To pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§ 33.302(a)).
 - e) To notify recipient in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor (§ 33.302(b)).
 - f) To employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§ 33.302(c)).
 - g) To employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).

- h) Provide Project Owner DBE participation achievements with bid proposal – this includes all information necessary for the Owner to complete the **Bidders List (ORF-249)**. The Owner may allow the prime contractor to complete the **Bidders List (ORF-249)**; however, the **Owner is responsible for review and submittal.**
- Maintain records documenting compliance with the requirements of Title 40 Part 33, including **Bidders List (ORF-249)** and documentation of the good faith efforts (§ 33.301(a)) by the Project Owner and prime contractor.

Prime Contractor Responsibilities:

- Employ the six Good Faith Efforts steps in paragraphs (a) through (e) of § 33.301 if the prime contractor awards subcontracts (§ 33.301(f)).
- Provide **ORF form 6100-2 – DBE Program Subcontractor Participation Form** and **ORF form 6100-3 – DBE Program Subcontractor Performance Form** to each DBE subcontractor as part of the bid conference and prior to opening of the contractor's bid or proposal (§ 33.302(e) and (f)). Complete **ORF form 6100-4 – DBE Program Subcontractor Utilization Form** (§ 33.302(g))
- Submit to recipient with bid package or proposal the completed **ORF form 6100-4**, plus an **ORF form 6100-3** for each DBE subcontractor used in the contractor's bid or proposal (§ 33.302(f) and (g)).
- Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Project Owner (§ 33.302(a)).
- Notify the recipient in writing prior to prime contractor termination of a DBE subcontractor for convenience (§ 33.302(b)).
- Employ the six good faith efforts described in (§ 33.301) if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§ 33.302(c)).
- Employ the six good faith efforts described in (§ 33.301) even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).
- Provide Project Owner DBE participation achievements with bid proposal. This includes information necessary for Owner's completion of the **Bidders List (ORF-249)**.

- Maintain records documenting its compliance with the requirements of Title 40 Part 33, including **Bidders List (ORF-249)** and documentation of the good faith efforts (§ 33.301(a)) by the Project Owner and prime contractor.

Subcontractor Responsibilities:

- May submit **ORF form 6100-2 – DBE Subcontractor Participation Form** to Debra Bradford, EPA Region 6 DBE Coordinator (§ 33.302(e)). Submitted if concerns with EPA funded project (e.g. termination, late payment, etc.)
- Must complete **ORF form 6100-3 – DBE Program Subcontractor Performance Form**, and submit it to the prime contractor soliciting services from the subcontractor prior to the opening of bids for the prime contract.

Summary of ORF Forms

ORF Form	Requirement	Provided By	Completed By	Submitted To
6100-2: DBE Subcontractor Participation Form	Project Owners required to have prime contractors provide form to Subcontractors	Prime Contractors to DBE Subcontractors	DBE Subcontractors if concerns with EPA funded project (e.g. termination, late payment, etc)	EPA Region 6 DBE Coordinator, Debora Bradford
6100-3: DBE Subcontractor Performance Form	Project Owners required to have prime contractors provide form to Subcontractors	Prime Contractors to DBE Subcontractors	DBE Subcontractors with Prime Contractor's Signature. Completed when bidding on a job.	Project Owners as part of a bid or proposal package
6100-4: DBE Subcontractor Utilization Form	Project Owners required to have prime contractors complete the form	Project Owners to Prime Contractors	Prime Contractors to indicate the utilization of a DBE.	Project Owners as part of bid or proposal

APPENDIX B: TITLE 40 PART 33 SUBPART C—GOOD FAITH EFFORTS**§ 33.102 When do the requirements of this part apply?**

The requirements of this part apply to procurement under CWSRF financial assistance agreements performed entirely within the United States, whether by a Project Owner or its prime contractor, for construction, equipment, services, and supplies.

§ 33.106 What assurances must CWSRF financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in Appendix A to this part concerning compliance with the requirements of this part.

§ 33.206 Is there a list of certified MBEs and WBEs?

The Oklahoma Department of Transportation has developed a DBE Directory of Certified Firms. This database can be found at this website: <https://okdot.gob2g.com/Default.asp>. There may be other DBEs outside of this database.

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by §33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an CWSRF financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

- a) Ensure DBE's are made aware of contracting opportunities fully practicable through outreach and recruitment activities. For State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBE's, arrange periods for contracts, and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBE's in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBE's. For state and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBE's when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

- a) Project Owners must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- b) Its prime contractor must notify Project Owner in writing prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.
- d) A Project Owner must require its prime contractor to employ the six good faith efforts described in §33.301 even if the prime contractor has achieved its fair share objectives under §33.301 subpart D above.
- e) A recipient must require its prime contractor to provide **ORF Form 6100-2**—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. **ORF Form 6100-2** gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of **ORF Form 6100-2** directly to the appropriate EPA DBE Coordinator.
- f) A recipient must require its prime contractor to have its DBE subcontractors complete **ORF Form 6100-3**—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.
- g) A recipient must require its prime contractor to complete and submit **ORF Form 6100-4**—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

- h) Copies of **ORF Form 6100-2**—DBE Program Subcontractor Participation Form, **ORF Form 6100-3**—DBE Program Subcontractor Performance Form and **ORF Form 6100-4**—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.
- i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix A concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because it's MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under § 33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

Source: *Federal Requirements and Contract Provisions for Special Appropriation Act Projects, US Environmental Protection Agency, Region III, June 2008*

**APPENDIX C: RESOURCE LISTING CONTACT INFORMATION FOR
UTILIZATION OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

Resource Listing	Contact Information	Website
U.S. Small Business Administration (SBA) In addition to the national office, the SBA has local district and regional offices to assist small businesses in contracting with the public and private sector.	US Small Business Administration 409 3rd St, SW Washington DC 20416 Phone: 800-827-5722	https://www.sba.gov/
U. S. Small Business Administration (SBA) - OK. District Office	301 NW 6 th St. Oklahoma City, OK 73102 Phone: 405.609.0800	https://www.sba.gov/offices/district/ok/oklahoma-city
Minority Business Development Administration (MBDA): The MBDA is an agency within the U.S. Dept. of Commerce, created to foster the development and growth of minority businesses in the U.S. and coordinates resources in the public and private sectors to help MBEs.	1401 Constitution Ave NW Washington, D.C. 20230 Email: support@mbda.gov Phone: (202) 482-2000	http://www.mbda.gov/
Standard Industrial Classification Codes (SIC) or North American Industry Classification System (NAICS) codes visit the websites.	U.S. Bureau of Labor Statistics Postal Square Building, 2 Massachusetts Ave. NE Washington, DC 20212-0001 Phone: 1-202-691-5200	http://www.bls.gov/iag/tgs/iag_index_naics.htm
Oklahoma Department of Transportation (ODOT) and the Minority/Disadvantaged Business Enterprise (ODOT – MBE/DBE). Project Owners and bidders may locate qualified M/WBE's through the MBE/WBE Directory	200 NE 21 st Street Oklahoma City, OK 73105 Phone: 405.521.2082	https://okdot.gob2g.com/Default.asp

US EPA Office of Small and Disadvantaged Business Utilization (OSDBU): advocates and advances the business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses. The Small Business Vendor Profile System contains information of number of small and disadvantaged companies registered with OSDBU.	USEPA Office of Small Programs 1200 Pennsylvania Ave. NW Mail Code 1230T Washington, D.C. 20460 Phone: 202 566-2075	http://cfpub.epa.gov/sbvps/ Select “search the OSBP Registry” and click on the search criteria of interest (ethnicity, size, SIC, etc.)
National Black Chamber of Commerce	4400 Jenifer St NW #331, Washington, DC 20015 Phone: 202 466-6888 Fax: 202 466-4918 Email: info@nationalbcc.org	http://www.nationalbcc.org
U.S. Hispanic Chamber of Commerce	424 K St NW #401, Washington, DC 20005 Phone: (202) 842-1212	http://www.usbcc.com
National Association of Minority Contractors (NAMC)	910 17th Street, NW, Suite 413 Washington, DC 20006 Phone: 202.296.1600 info@namcnational.org	http://namcnational.org/
National Association of Women’s Business Owners (NAWBO)	601 Pennsylvania Ave NW South Building, Ste 900 Washington, DC 20004 Phone: 800-556-2926 Fax: 202-403-3788	www.nawbo.org
National Minority Supplier Development Council, Inc. (NMSDC)	1359 Broadway, 10th Floor, Suite 1000 New York, NY 10018 Phone: (212) 944-2430 Fax: (212) 719-9611	http://www.nmsdc.org/

Native American Development Corporation (NADC) - provides technical assistance, financial lending opportunities, and champions small businesses	17 N. 26th St. Billings, MT 59101 Phone: (406) 259-3804 Fax: (406) 259-4569 Email: nadcptac@nadc-nabn.org	http://www.nadc-nabn.org/
City of Tulsa - Human Rights Department Maintains a list of Minority and Female business Enterprises that are certified through the “building Resources in Developing and Growing Enterprises	175 E. 2nd St. Tulsa, OK. 74103 Phone: (918) 596-7818	https://www.cityoftulsa.org/government/departments/resilience-and-equity/small-business-enterprise-program/ Click on the ‘member list’
Southwest Minority Supplier Development Council: Maintains lists of certified Minority Business Enterprises in Oklahoma	7301 Broadway Ext Ste 224, OKC, OK 73116 Phone: (405) 767-9900	http://www.smsdc.org/
National Association of Women in Construction (NAWIC)	327 S. Adams Street Fort Worth, TX 76104 Phone: 800-552-3506 817.877.5551 Fax: 817.877.0324	http://www.nawic.org/
Oklahoma Department of Central Services Maintains a list of MBE/WBEs	OMES Central Purchasing 5005 N. Lincoln Blvd., Suite 300 OKC, OK 73105 Phone: 405-522-0955	https://omes.ok.gov/services/purchasing
Bureau of Indian Affairs - Maintains a list of Native American Contractors and Suppliers by Trade	P.O. Box 368 (1 Mile North on Hwy 281) Anadarko, OK 73005 Phone: (405) 247-6673 Fax: (405) 247-5611	https://www.bia.gov/as-ia/ieed/division-economic-development/native-american-business-development
Oklahoma Department of Commerce Certification Programs and information	900 N Stiles Ave. Oklahoma City, OK 73104 Phone: (405) 815-6552 Toll-Free: (800) 879-6552	https://okcommerce.gov/business/certifications/
Cherokee Nation Tribal Employment Rights Office - Maintains a directory of Indian-owned businesses	Cherokee Nation TERO Dept. P.O. Box 948 Tahlequah, OK 74465 Phone: (918) 453-5334 or Toll Free: 800-256-0671 ext 5334	http://cherokeetero.com/

Davis Bacon compliance software requirements

The _____ (hereafter the Owner) has decided to use a Davis Bacon compliance software provided by Elation Systems. This is a cloud-based software that simplifies compliance with Davis Bacon Act, and that is provided free of charge for State Revolving Fund (SRF) projects.

In order for bidders to be considered eligible, it is mandatory that they agree to use the Elation Systems software throughout the life of the project, and work with the Owner and funding agency to ensure all required information is provided in a timely manner. Failure to do this could result in an event of default and the Owner shall have all the rights and remedies at law or equity as may be allowed by law including but not limited to the termination of the Contract.

For more information related to the Elation Systems software, please visit www.elationsys.com or contact OWRB at (405) 530-8800.

I, _____, representing _____ (the Bidder) agree to create a free account in the Elation Systems software, and to upload all necessary information to their website to verify compliance with the Davis Bacon Act.

Bidder's Authorized Representative signature

____/____/____
Date

DEBARMENT / SUSPENSION CERTIFICATION

I, _____, hereby certify that I have checked on the
(Authorized Representative of Recipient)

federal System for Award Management (www.sam.gov) website and determined that
_____ is not shown as an “excluded party” that is

(Name of entity)

debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. (See 2 CFR Part 180 and 2 CFR Part 1532 for additional information on the federal governmentwide debarment and suspension system for nonprocurement programs and activities.)

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

Signature

Date

Title

Name of Recipient

Verifying prime contractors and subcontractors for construction, equipment, supplies and services: Using the www.sam.gov website, the recipient must verify prior to awarding the contract that the prime contractor is not listed as an “excluded party” that is debarred, suspended or otherwise excluded from or ineligible. Once any subcontractors are known, they also must be verified as not listed as an “excluded party” prior to award of a subcontract. The recipient must print a dated record of the verification from the www.sam.gov website and retain a copy that is available for review by OWRB. The prime contractors and subcontractors must be verified prior to the contract award or the costs may be disallowed.

The undersigned authorized representatives:

_____, representing _____ (Owner),

_____, representing _____ (Engineer),

_____, representing _____ (Contractor),

for _____,

Brief description of Contract

hereby certify that:

The contract or portion of the contract funded by the Oklahoma Water Resources Board (OWRB) through loan ORF-____-____- CW, was completed on _____, and a final inspection of the completed work was conducted on _____.

The above referenced contract or portion of contract was constructed in accordance with the approved Plans and Specifications, and all applicable laws, rules and regulations. All completed construction items are in operation and have been accepted by the Owner. All relevant federal and state CWSRF requirements were complied with. All requests for loan proceeds relevant to the contract or portion of contract have been drawn as per the Final Pay Request and none of the expenses incurred under this contract or portion of contract have been requested more than once.

The as-built plans, if applicable, have been provided to the Oklahoma Department of Environmental Quality (ODEQ). The Contractor has been paid in full for the contract or portion of contract completed being closed out, in accordance with the Contract Agreement, pending receipt of the amount retained. The Contractor has paid in full for all materials purchased and all labor employed, and there are no claims against the Contractor as an employer under this contract or portion of contract on account of injuries sustained by workmen employed by the Contractor. The Contractor releases the Owner from any claims arising by virtue of this contract or portion of contract.

☐ (Check if applicable) OWRB is hereby authorized to de-obligate any remaining loan proceeds.

Owner's authorized representative signature

Date

Engineer's authorized representative signature

Date

Contractor's authorized representative signature

Date

<https://sam.gov/content/wage-determinations>

INSERT CURRENT WAGE DECISIONS THAT APPLY
TO THE CONSTRUCTION PROJECT HERE
IN CONTRACT SPECIFICATIONS

See Requirements in ORF-185

DAVIS-BACON WAGE DECISION

OKLAHOMA WATER RESOURCES BOARD

Supplemental Conditions

for

Projects funded from the

Clean Water State Revolving Loan Fund

RULES AND REGULATIONS

TITLE 41 - PUBLIC CONTRACT AND PROPERTY MANAGEMENT

CHAPTER 60 - OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR COMPLIANCE RESPONSIBILITY FOR EQUAL EMPLOYMENT OPPORTUNITY FINAL RULE

60-1.4 Equal opportunity clause.

(b) Federally assisted construction contracts.

(1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as

otherwise provided by law.

- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering

agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- (c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.
- (d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.
- (e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.
- (f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.
[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

60-4.2 Solicitations.

- (a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in § 60-4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in § 60-4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance

- or guarantee involving federally assisted construction covered by this Part 60-4.
- (b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.
 - (c) Contracting officers, applicants and nonconstruction contractors shall give written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.
 - (d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part (see 41 CFR 60-4.2(a)):

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for MBE
 CONSTRUCTION 13.94%; SUPPLIES - 7.48%;
 SERVICES - 14.29%; EQUIPMENT - 9.13%

Goals for WBE
 CONSTRUCTION - 6.92%; SUPPLIES - 0%;
 SERVICES - 26.51%; EQUIPMENT - 19.90%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such

geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65977, Oct. 3, 1980]

60-4.3 Equal opportunity clauses.

- (a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described

above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include

in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective

bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or

community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory

- personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in

violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained

in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- (b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

**DAVIS BACON ACT REQUIREMENTS
(subchapter IV of Chapter 31 of Title 40, United States Code and 29 CFR parts 1, 3, and 5) (SEE APPENDIX 1 FOR CLARIFYING INFORMATION)**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this contract pursuant to the provisions applicable to such assistance.

(a) Any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1.

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of

Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their

representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The **OWRB SRF** or the **Owner** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with

the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the **Owner for transmission to the OWRB SRF**. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an

individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired.

Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at beta.SAM.gov or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the **OWRB SRF** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the **Owner**, as the case may be, for transmission to the **OWRB SRF**, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Owner.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or

subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the **CWSRF** or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's

level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable

predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs

(b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **Owner or the OWRB SRF** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the **Owner or OWRB SRF** and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

WAGE RATE REQUIREMENTS

Notwithstanding any other provision of law and in a manner consistent with other provisions, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part with CWSRF funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

See Appendix 1 for clarifying information.

Build America, Buy America

P.L 117-58, Infrastructure Investment and Jobs Act, 2021, Title IX Build America, Buy America, section 70914.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

(b) **WAIVER.**—The head of a Federal agency that applies a domestic content procurement preference under this section may waive the application of that preference in any case in which the head of the Federal agency finds that—

(1) applying the domestic content procurement preference would be inconsistent with the public interest;

(2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

2 CFR Part 184.3

Construction materials means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

(i) Non-ferrous metals;

(ii) Plastic and polymer-based products

(including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

(iii) Glass (including optic glass);

(iv) Fiber optic cable (including drop cable);

(v) Optical fiber;

(vi) Lumber;

(vii) Engineered wood; and

(viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

Manufactured products means:

(1) Articles, materials, or supplies that have been:

(i) Processed into a specific form and shape; or
 (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under [§ 184.4\(c\)](#) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under [§ 184.4\(c\)](#) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

Produced in the United States means:

(1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) In the case of manufactured products:

(i) The product was manufactured in the United States; and

(ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. *See* [§ 184.2\(a\)](#). The costs of components of a manufactured product are determined according to [§ 184.5](#).

(3) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* [§ 184.6](#) for more information on the meaning of "all manufacturing processes" for specific construction materials.

Section 70917(c) materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. *See* section 70917(c) of the Build America, Buy America Act.

SYSTEM FOR AWARD MANAGEMENT (SAM)

SAM registration is required for all SRF programs (CWSRF and DWSRF) applicants and Awardees (Entities, Prime Contractors, Subcontractors, Vendors) in order to be awarded

contracts by the SRF Programs. SAM replaces Central Contractor Registration/Federal Agency Registration, Online Representations and Certifications Application, and Excluded Parties List System. Applicants and awardees are required to complete a one-time free registration to provide basic information relevant to procurement and financial transactions. Registrants must retain an active status to be eligible for SRF projects. New Applicants and Awardees can go to SAM.gov to complete the registration process.

Note: In order to register in SAM, a Data Universal Number System (DUNS) number will be required. DUNS number is a unique, non-indicative 9-digit identifier issued and maintained by Dun & Bradstreet (D&B) that verifies the existence of a business entity globally. D&B assigns DUNS numbers for each physical location of a business. All entities doing business with the U.S Government can receive a DUNS number FREE of charge and, under normal circumstances, within 1-2 business days when using D&B web form process at <http://fedgov.dnb.com/webform>.

OTHER SUPPLEMENTAL CONDITIONS

Disadvantaged Business Enterprises (DBE)

40 CFR 33.301 Contracting with disadvantaged business enterprises and labor surplus area firms.

The SRF loan recipient and subcontractors will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

DBE participation requirements apply to projects constructed with funds directly made available by the federal capitalization grant (equivalency projects).

(1) EPA and the State will negotiate a "Fair Share Objective" (which shall represent a percentage of DBE participation).

(2) When soliciting for a subcontractor (A/E or construction contractor), the loan recipient shall take the following six good faith efforts:

(A) Include qualified Small, DBE businesses on solicitation lists.

(B) Assure that Small, DBE businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum Small, DBE business participation.

(D) Where the requirements of the work permits, establish delivery schedules which will encourage participation by Small, DBE businesses.

(E) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the United States Department of Commerce, as appropriate.

(F) If any subcontracts are to be let, require the prime contractor or A/E to take the good faith efforts in (A) through (E) of this paragraph (2).

2. Affirmative Steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

Electronics

2 CFR 200.216, Section 889 of Public Law 115-232-Prohibition on certain telecommunication and video surveillance services or equipment.

Completion Date

If not stated elsewhere in these specifications, the contractor shall complete work under this contract within _____ calendar days. Time for completion shall begin on the 10th day after issuance of the work order, which shall consist of a written request by the engineer for the contractor to proceed with the construction of the project.

Contractor's Liability and Builders All Risk Insurance

The contractor shall furnish the following insurance when the contract is awarded:

(A) Workmen's Compensation: The contractor shall carry on his work in accordance with the requirements of the Workmen's Compensation Law of the State of Oklahoma, and shall not reject the provisions thereof during the life of the contract. A certificate of coverage must be returned with the contract.

(B) Public Liability and Property Damage: He shall also protect himself by liability reinsurance against any and all claims for damages to persons or property which may arise out of operations under this contract, whether such operations be by himself or a subcontractor or by anyone directly employed by either of them. Certificates of such insurance shall be file with the Owner and shall be subject to its approval as to adequacy of protection. The public liability insurance shall have limits of not less than \$100,000/\$300,000 or an amount to be determined by OWRB and Property Damage insurance of not less than \$50,000/\$100,000 or an amount to be determined by OWRB shall be carried by the contractor during the life of the contract. A certificate of such coverage must be returned with the contract.

(C) Builder's Risk: Provide Builders Risk Insurance only if called for in other sections of the specifications.

Bonds

All bonds are for the full value of the contract and must be issued by a surety company authorized by the Oklahoma Insurance Commission to do business in the State of Oklahoma. They will be required after the award of the contract.

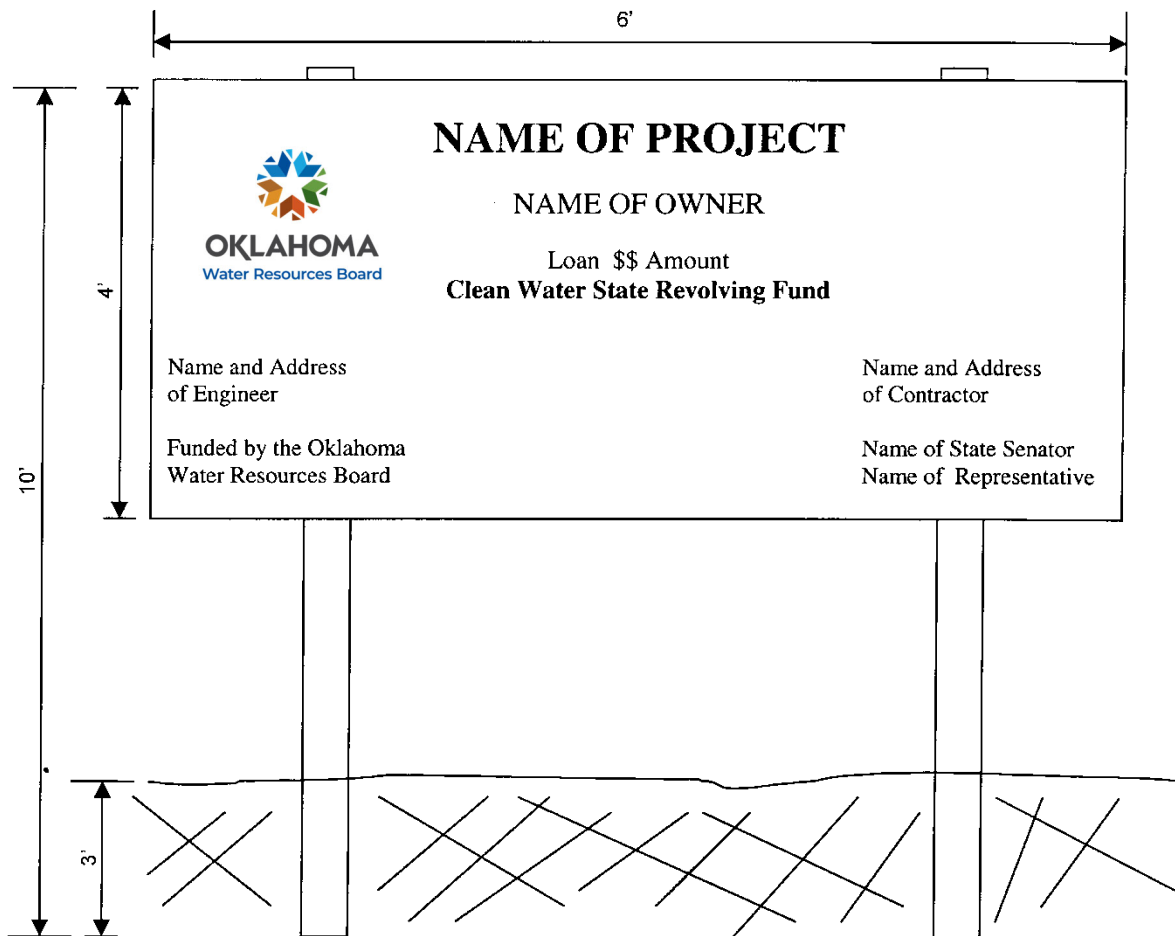
Three bonds are required for all contracts with a value exceeding Fifty Thousand Dollars (\$50,000.00) They are: (1.) Performance Bond to insure the completion of the work in accordance with the contract documents in the time stipulated; (2.) Maintenance Bond to provide for defects in construction or materials for a period of one (1) year from the date of acceptance of the completed work; and (3.) Statutory Bond to assure the Owner is protected from the action

of subcontractors, suppliers and employees
for unpaid debts of the contractor.

Irrevocable Letters of Credit may be used as a substitute for bonds on contracts exceeding Fifty Thousand Dollars (\$50,000.00). The letters of credit must be issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation on forms obtained from the Owner.

PROJECT SIGN

- The general contractor shall erect and maintain for the life of the construction contract a suitable sign, 4' x 6' in size, and detailed hereon, lettered black on white background. Sign shall be professionally painted. Lettering to be appropriate size. No separate bid item. Sign shall be the general obligation of the Contractor.
- The OWRB logo is required on the project sign if the project is funded in part with CWSRF funds. The OWRB logo is available at <http://www.owrb.ok.gov/about/index.php> or may be provided directly by OWRB.
- Redwood Posts shall be 4" x 4" x 10' buried securely a minimum of 3 feet below ground.
- Sign face shall be constructed of 3/4" x 4' x 6' – 5 ply Dura-plywood board & mounted to Posts with four (4) 5/8" x 6" Carriage Bolts.



Appendix 1

Wage Rate Requirements

I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) For Subrecipients That Are Governmental and Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities, and for subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Dannell Brown at brown.dannell@epa.gov or at 214-665-7279 of EPA, Region VI Grants and Audit Management Branch for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/whd/>.

Under these terms and conditions, the Non-Governmental subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain wage determinations for the locality or localities in which a covered activity subject to DB will take place at www.beta.sam.gov prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to the assigned Financial Assistance Division Engineer, Oklahoma Water Resources Board, 3800 N. Classen Blvd, Oklahoma City, OK 73118. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.beta.sam.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.beta.sam.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.beta.sam.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe

benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls.

Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency

recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to

each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient

shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office at 405-231-4158.

SECTION 01 33 00 – SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. This Section Includes:
 - 1. Definitions.
 - 2. Submittal procedures.
 - 3. Proposed product list.
 - 4. Product data.
 - 5. Shop Drawings.
 - 6. Samples.
 - 7. Other submittals.
 - 8. Design data.
 - 9. Test reports.
 - 10. Certificates.
 - 11. Manufacturer's instructions.
 - 12. Manufacturer's field reports.
 - 13. Erection Drawings.
 - 14. Contractor review.
 - 15. Engineer review.

1.2 DEFINITIONS

- A. Action Submittals:
 - 1. Written and graphic information and physical samples that require Engineer's responsive action.
- B. Informational Submittals:
 - 1. Written and graphic information and physical Samples that DO NOT require Engineer's responsive action. Submittals may be rejected for NOT complying with requirements.

1.3 SUBMITTAL PROCEDURES

- A. Transmit each submittal with Engineer-accepted form. Package submittal information by individual specification section. DO NOT combine different specification sections together in submittal package, unless otherwise directed in specification or items are part of a common system.
- B. Sequentially number transmittal forms. Mark revised submittals with original number and sequential alphabetic suffix.
- C. Identify:
 - 1. Project (Engineer's project number and title), Contractor, Subcontractor and supplier, pertinent Drawing and detail number, and Specification Section number appropriate to submittal.
- D. The Contractor shall review all submittals before submitting to Engineer. Apply Contractor's stamp, signed or initialed, certifying that review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is as specified in requirements of the Work and Contract Documents.
- E. Provide a submittal schedule, in electronic spreadsheet format, at the beginning of the project to identify all expected submittals.

- F. Post electronic submittals as PDF electronic files to the web-based project management software. Coordinate submission of related items.
- G. For each submittal for review, allow 30 days excluding delivery time to and from Contractor.
- H. Identify variations in Contract Documents and product or system limitations that may be detrimental to successful performance of completed Work.
- I. Allow space on submittals for Contractor and Engineer review stamps.
- J. When revised for resubmission, identify changes made since previous submission.
- K. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- L. Submittals not requested WILL NOT be recognized nor processed.
- M. Incomplete Submittals:
 - 1. Engineer WILL NOT review. Complete submittals for each item are required. Delays resulting from incomplete submittals are NOT the responsibility of Engineer.

1.4 PROPOSED PRODUCT LIST

- A. Within 15 days after date of Owner-Contractor Agreement, submit list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
- B. For products specified only by reference standards, indicate manufacturer, trade name, model or catalog designation, and reference standards.

1.5 PRODUCT DATA

- A. Action Submittal:
 - 1. Submit to Engineer for review for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Post electronic submittals as PDF electronic files to web-based project management software.
- C. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- D. Indicate product utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- E. After review, produce copies and distribute as specified in Paragraph 1.3 "Submittal Procedures" and for record documents specified in Section 01 77 00 – Closeout Procedures.

1.6 SHOP DRAWINGS

- A. Action Submittal:
 - 1. Submit to Engineer for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Indicate special utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.

- C. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional Engineer responsible for designing components specified in Shop Drawings.
 - 1. Include signed and sealed calculations to support design.
 - 2. Submit Shop Drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
 - 3. Make revisions and provide additional information when required by authorities having jurisdiction.
- D. Post electronic submittals as PDF electronic files to web-based project management software.
- E. After review, produce copies and distribute as specified in Paragraph 1.3 "Submittal Procedures" and for record documents described in Section 01 77 00 – Closeout Procedures.

1.7 SAMPLES

- A. Action Submittal:
 - 1. Submit to Engineer for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Samples for Selection as Specified in Product Sections:
 - 1. Submit to Engineer for aesthetic, color, and finish selection.
 - 2. Submit Samples of finishes, textures, and patterns for Engineer selection.
- C. Submit Samples to illustrate functional and aesthetic characteristics of products, with integral parts and attachment devices. Coordinate Sample submittals for interfacing work.
- D. Include identification on each Sample, with full Project information.
- E. Submit number of Samples specified in individual Specification Sections; Engineer or Owner will retain one Sample.
- F. Reviewed Samples that may be used in the Work are specified in individual Specification Sections.
- G. Samples WILL NOT be used for testing purposes unless specifically stated in Specification Section.
- H. After review, produce copies and distribute as specified in Paragraph 1.3 "Submittal Procedures" and for record documents described in Section 01 77 00 – Closeout Procedures.

1.8 ERECTION DRAWINGS

- A. Action Submittal:
 - 1. Submit Drawings for information assessing conformance with information given and design concept expressed in Contract Documents.
- B. After review, produce copies and distribute as specified in Paragraph 1.3 "Submittal Procedures" and for record documents described in Section 01 77 00 – Closeout Procedures.

1.9 OTHER SUBMITTALS

- A. Closeout Submittals:
 - 1. See Section 01 77 00 – Closeout Procedures.
- B. Informational Submittal:

1. Submit data for Engineer's knowledge as Contract administrator or for Owner.
 - C. Submit information for assessing conformance with information given and design concept expressed in Contract Documents.
- 1.10 TEST REPORTS
- A. Informational Submittal:
 1. Submit reports for Engineer's knowledge as Contract administrator or for Owner.
 - B. Submit test reports for information for assessing conformance with information given and design concept expressed in Contract Documents.
- 1.11 CERTIFICATES
- A. Informational Submittal:
 1. Submit certification by manufacturer, installation/application Subcontractor, or Contractor to Engineer, in quantities specified for Product Data.
 - B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
 - C. Certificates may be recent or previous test results on material or product but must be acceptable to Engineer.
- 1.12 MANUFACTURER'S INSTRUCTIONS
- A. Informational Submittal:
 1. Submit manufacturer's installation instructions for Engineer's knowledge as Contract administrator or for Owner.
 - B. Submit printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing, to Engineer in quantities specified for Product Data.
 - C. Specify special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.
- 1.13 MANUFACTURER'S FIELD REPORTS
- A. Informational Submittal:
 1. Submit reports for Engineer's knowledge as Contract administrator or for Owner.
 - B. Submit report in duplicate and in electronic format (pdf) within 5 days of observation to Engineer for information.
 - C. Submit reports for information for assessing conformance with information given and design concept expressed in Contract Documents.
- 1.14 CONTRACTOR REVIEW
- A. Review for compliance with Contract Documents and approve submittals before transmitting to Engineer. If during the Engineer's review it becomes clear that a submittal was inadequately reviewed by the Contractor, the submittal will be rejected.
 - B. Contractor Responsibilities:

1. Determination and verification of materials including manufacturer's catalog numbers.
 2. Determination and verification of field measurements and field construction criteria.
 3. Checking and coordinating information in submittal with requirements of Work and of Contract Documents.
 4. Determination of accuracy and completeness of dimensions and quantities.
 5. Confirmation and coordination of dimensions and field conditions at Site.
 6. Construction means, techniques, sequences, and procedures.
 7. Safety precautions.
 8. Coordination and performance of Work of all trades.
- C. Stamp, sign or initial, and date each submittal to certify compliance with requirements of Contract Documents.
- D. DO NOT fabricate products or begin Work for which submittals are required until approved submittals have been received from Engineer.

1.15 ENGINEER REVIEW

- A. DO NOT make "mass submittals" to Engineer. "Mass submittals" are defined as six or more submittals or items in one day or 20 or more submittals or items in one week. If "mass submittals" are received, Engineer's review time stated above will be extended as necessary to perform proper review. Engineer will review "mass submittals" based on priority determined by Engineer after consultation with Owner and Contractor.
- B. Informational submittals and other similar data are for Engineer's information, DO NOT require Engineer's responsive action, and WILL NOT be reviewed or returned with comment.
- C. Submittals made by Contractor that are NOT required by Contract Documents may be returned without action.
- D. Submittal approval DOES NOT authorize changes to Contract requirements unless accompanied by Change Order or Work Change Directive.
- E. Action Submittal Dispositions:
1. Engineer will review, markup, stamp as appropriate, and distribute markedup electronic copies to appropriate parties as noted.
 2. Furnish as Submitted:
 - a. Contractor may incorporate product(s) or implement Work covered by submittal.
 3. Furnish as Corrected or Noted:
 - a. Contractor may incorporate product(s) or implement Work covered by submittal, as specified in Engineer's notations.
 4. Revise and Resubmit:
 - a. Make corrections or obtain missing portions and resubmit.
 5. Partial Resubmittal:
 - a. Except for portions indicated, Contractor may begin to incorporate product(s) or implement Work covered by submittal, as specified in Engineer's notations.
 6. Rejected:
 - a. Contractor may NOT incorporate product(s) or implement Work covered by submittal.
- F. Owner may withhold monies due to Contractor to cover additional costs beyond the second submittal review.

PART 2 - PRODUCTS (NOT USED)

PART 3 - EXECUTION (NOT USED)

END OF SECTION